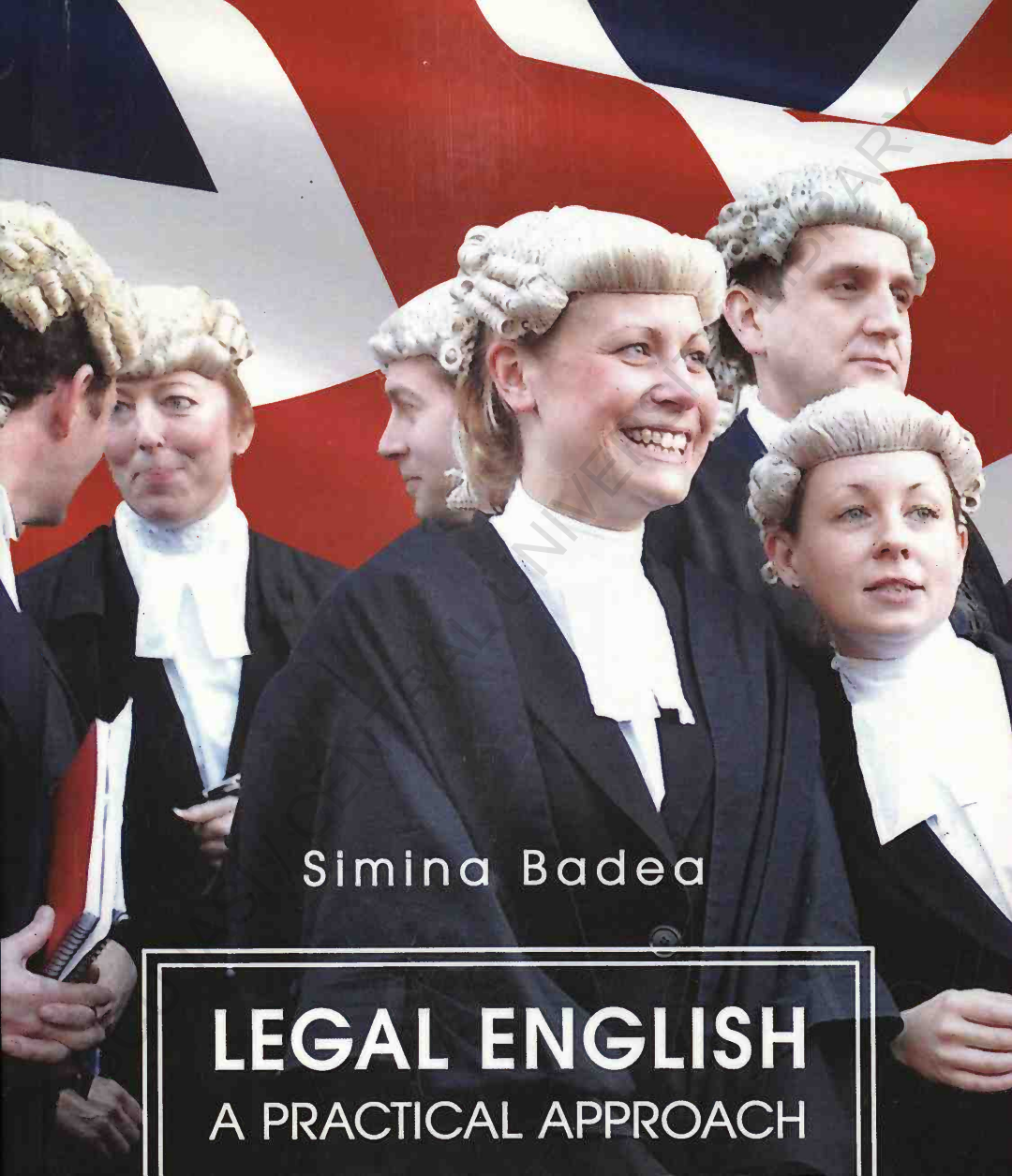

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UNIT 1

INTRODUCTION TO LAW

Learning objectives:

In this unit, you will:

- acquire the introductory notions to law (definition, meanings of the terms *law* and *right*, functions of law, definition of *jurisprudence*, types of law)
- discover the Romanian equivalents of these terms
- practise the relevant vocabulary by completing various exercises
- develop translation skills

Reading

Law and Right

In a general sense, the term **law** (R. *drept*) can be defined as a body of official rules and regulations enforced by a political authority in order to govern a society.

A **law** (R. *lege*) is a piece of enacted legislation.

Other definitions of law include:

"1. the enforceable body of rules that govern any society; 2. one of the rules making up the body of law, such as an Act of Parliament ." (*Oxford Dictionary of Law*)

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"1. the legislative pronouncement of rules to guide one's actions in society; 2. the total of those rules of conduct put in force by legislative authority or court decisions, or established by local custom." (*Barron's Dictionary of Legal Terms*)

"1. the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society; the legal system; 2. the aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; 3. the set of rules or principles dealing with a specific area of a legal system; 4. the judicial and administrative process; legal action and proceedings (...)." (*Black's Law Dictionary*)

It is important to distinguish between **law** and **right,** since they can be both translated into Romanian as "drept".

The definition of the term **right** can be formulated as follows:

"1. title to or an interest in any property; 2. any other interest or privilege recognized and protected by law; 3. freedom to exercise any power conferred by law." (*Oxford Dictionary of Law*)

The answer to the question "What is law?" concerns an entire field of study known as **jurisprudence.**

The term comes from Latin 'juris prudentia', meaning "the study, knowledge or science of law".

Scholars of jurisprudence or legal theorists raise fundamental questions about law (questions such as "What should be prevalent, written rules and regulations or unwritten principles derived from tradition, moral concepts, historical

practice?"), seeking to analyze various branches of law, to contrast it with other fields of knowledge, to offer deeper insight into the nature of law, legal systems and institutions.

Jurisprudence also denotes the course of judicial decisions, i.e. case law, as opposed to legislation.

Every society, every community that has ever existed has recognized the need for rules, either in written or unwritten form. These rules are essential if the community is to work, they come into being in various forms. When some people have the power, the authority to enforce a rule, it will acquire the status of a "law".

Word study

law s. = drept (ca ştiinţă); lege
right s. = drept subiectiv (ca prerogativă a persoanei)
to enforce a law/rule = a pune în aplicare o lege/normă
enforceable adj. = executoriu; opozabil
to enact v.t. = a adopta, a legifera, a hotărî
body of rules/laws= totalitatea normelor/reglementărilor/legilor
legislative pronouncement = concretizarea legislativă
to come/enter into force = a intra în vigoare
conduct s. = conduită, comportament
court s. = instanţă de judecată
to establish v.t. = a institui, a stabili, a înfiinţa
custom s. = cutumă, obicei
judicial precedent = precedent judiciar
grounds s. = temeiuri, considerente
proceedings s. = proceduri
title s. = titlu, drept; document doveditor al unui drept
jurisprudence s. = jurisprudenţă
prevalent adj. = predominant, preponderent
branch of law = ramură de drept

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1.1. Translate into English:

1. Dreptul este o ştiinţă, dar şi o artă.
2. Nu cunosc circumstanțele de drept și de fapt ale cauzei.
3. Multe tribunale administrative nu au reguli privind dreptul de a pleda.
4. Statele trebuie să asigure protecția împotriva încălcării drepturilor omului.
5. Nu este suficient ca o lege să fie bună, ea trebuie aplicată corect.
6. Dreptul se împarte pe ramuri: drept civil, drept penal, drept constituțional, drept administrativ etc.
7. Guvernul a introdus noi legi privind protecția mediului.
8. Studiul științific al dreptului se numește jurisprudență.
9. Familia și școala trebuie să formeze cetățeni care să respecte legea.
10. Faptele sale au avut drept consecință pierderea drepturilor civile.

You can use the following terms and phrases:

legal and factual issues/circumstances = circumstanţele de drept şi de fapt
case s. = cauză
right of audience = dreptul de a pleda
to infringe a right = a încălca un drept
infringement s. = încălcare
to enforce a law = a aplica o lege
criminal law = drept penal
environmental protection = protecţia mediului
law-abiding citizens = cetățeni care respectă legea
civil rights = drepturi civile

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1.2. Choose the correct answer(s) and underline it (them):

1. A right refers to:
a) a body of principles concerned with a typical area of a legal system;
b) a power, interest or privilege secured to a person and protected by law;
c) a legally enforceable claim that another shall do or shall not do a given act.

2. Law is defined as:
a) a body of rules and principles governing the affairs of a community and enforced by a political authority;
b) the condition of social order and justice created by adherence to such a system;
c) a piece of enacted legislation.

Reading

Functions of Law

Without laws, the world would be a total chaos, therefore the primary function of law is to maintain stability. There are many **functions** that law serves. For instance, laws against crimes help to maintain a relatively stable society, using sanctions as means by which the decisions of the courts are enforced.

Law protects property and fosters the exchange of goods and services in an economic society, also facilitating business activities and voluntary agreements (contracts).

Despite the fact that law has always been influenced by traditional ideas of right and wrong, it has also been used as an innovating, though formal mechanism of social change and

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control, protecting rights, inhibiting discrimination and improving the quality of individual life.

Besides formal legal rules, there are other means of social control and guides for behaviour such as mores, morality, public opinion and custom or tradition.

1.3. Choose the correct answer(s):

Among the main functions of law, one can mention:
a) dispute resolution;
b) protection of property;
c) enforcement of moral precepts.

1.4. Fill in the blank spaces with derivatives from the words in brackets:

1. The judicial function lies in the centre of any legal system, mainly dealing with the … of disputes. (adjudicate)
2. It ensures that the … parties submit to adjudication. (dispute)
3. One of the functions of law is to prevent … conduct. Law also governs the relations between individuals, providing facilities for private … (desire, arrange)
4. Law is needed for the … of disputes found in courts and tribunals. (settle)
5. A law usually prohibits what is morally wrong and …. Therefore, the relationship of law to … is crucial in order to understand the law. (accept, moral)
6. Mores represent the accepted traditional customs and … of a particular social group. (use)
7. Violations of mores had as a consequence the ... of various sanctions. (impose)
8. Public opinion refers to the public consensus, as with respect to an issue or situation. It reflects the attitudes and ... of a group of people with regard to issues concerning everybody. (prefer)

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9. In spite of the defeat, the ... was still high. (moral)
10. We are not in the position to ... on his behaviour. (moral)

1.5. Fill in the blank spaces with the appropriate words:

MORES are the accepted social (1)... prescribing behaviour of (2)... in society. They are part of the (3)...of a people. When people violate mores, this (4)... to the imposition of various (5)... such as (6)... or (7)... punishment.

(1) a) regulations; b) benefits; c) rules;
(2) a) convicts; b) individuals; c) officials;
(3) a) legal system; b) folkways; c) Civil Code;
(4) a) leads; b) prescribes; c) rules;
(5) a) sanctions; b) offences; c) penalty;
(6) a) death penalty; b) ostracism; c) court decisions;
(7) a) other kinds of; b) various; c) different.

PUBLIC OPINION is the voice of the people and it thus mirrors the attitudes and (1)... of a population toward (2)..., circumstances, and issues of (3)... interest. It is characteristically (4)... by the (5)... survey or public opinion (6)... .

(1) a) events; b) perspectives; c) horizons;
(2) a) politics; b) events; c) externalities;
(3) a) mutual; b) economic; c) legal;
(4) a) weighed; b) displayed; c) measured;
(5) a) sample; b) example; c) epitome;
(6) a) view; b) pool; c) poll.

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Reading

Types of Law

There are three main distinctions between:

a) **public law** and **private law;**
b) **civil law** and **criminal law;**
c) **substantive law** and **adjective law.**

a) Public law is the body of law which governs the relations between private individuals and the state. It consists of constitutional law, criminal law and administrative law taken together.

The main categories of public law are:

- **Criminal law,** which is the body of law defining offences against the community as a whole, regulating how suspects are investigated, charged and tried, and establishing punishments for convicted offenders.
- **Constitutional law**, which regulates the way the law itself operates and the relations between private citizens and government.
- **Administrative law,** which refers to the law governing the organization and operation of the executive branch of government and the relations of the executive with the legislature, the judiciary and the public.

Private law is the body of law dealing with private persons and their property and relationships.

b) For practical purposes, the most significant distinction remains between **civil law** and **criminal law**.

Civil law, as a form of private law, regulates civil or private rights, as opposed to criminal law or administrative law.

The purpose of civil law is to settle disputes between individuals and to provide remedies to the persons who feel wronged or injured, not to punish wrongdoers.

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The state sets the general legal framework and provides the legal institutions to operate the rights of individuals in such cases.

The main categories of English civil law are:

- **Contracts,** which represent binding agreements between people (or companies).
- **Torts,** which are wrongful acts committed by one individual against another individual's person, property or reputation. The law of tort is mainly concerned with providing compensation for personal injury and property damage caused by negligence. It also protects other interests, such as reputation, personal freedom, title to property and commercial interests.
- **Trusts,** which are arrangements whereby a **settlor** transfers property to one or more **trustees,** who will hold it for the benefit of one or more persons (the beneficiaries, who may include the trustee(s) or the settlor).
- **Succession**
- **Family law**
- **Employment law** etc.

Criminal law, as an aspect of public law, refers to acts deemed to be public wrongs which, even when committed against an individual, are considered to harm the well-being of society. Criminal law establishes the boundaries of acceptable and unacceptable conduct. A person who fails to observe the criminal law is regarded as having committed an offence against society as a whole. In point of terminology, **crime** or **offence** is a general term indicating non-compliance with the law.

In some cases, an action can violate both civil and criminal law. For instance, a person who has driven carelessly and injured another, will be liable to be prosecuted under the Road Traffic legislation and will be responsible to the injured party in a civil action.

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c) Substantive law and **adjective law**

The rules of **substantive law** are those legal rules guiding the courts in rendering decisions, whereas the **procedural rules** (**adjective** or **procedural law**) are those rules by which the law is enforced in the courts.

Substantive law means law in the strict sense. It deals with all other matters that are not matters purely of practice and procedure, as opposed to adjective law.

Adjective law governs the machinery by which substantive law is enforced, namely the rules of evidence and procedure in civil and criminal courts.

For example, if a man kills another, it is a question of substantive law as to whether the appropriate charge is murder (killing with malice aforethought) or manslaughter (involuntary manslaughter or in mitigating circumstances). Once he has been charged with either of these crimes, the rules of procedure will govern: how his guilt should be proved; what evidence should be admissible at his trial; how the evidence should be presented in court.

Word study

offence s. = infracţiune
offender s. = infractor
to charge with= a acuza de (formal, oficial)
to convict v.t. = a condamna;
to settle a dispute = a rezolva, a soluţiona un conflict
remedy s. = compensaţie, despăgubire, reparare a prejudiciului
injured person = persoană vătămată
wrong s. = faptă ilicită
wrongdoer s. = răufăcător
legal framework = cadru juridic
binding adj. = obligatoriu
agreement s. = acord
tort s. = faptă ilicită cauzatoare de prejudiciu; delict civil

damage s. = prejudiciu, daună
damages s. = despăgubiri, daune interese
trust s. = fiducie
settlor s. = constituitor
trustee s. = fiduciar
to deem v.t. = a considera
substantive law = drept substanţial
adjective law = drept procesual
malice aforethought = premeditare
manslaughter s. = omor din culpă
mitigating circumstances = circumstanţe atenuante
land law = drept funciar

1.6. True or false?

1. At one level, the distinction between private law and public law concerns the actions of the state and its functionaries with regard to the individual citizen.
2. Civil law involves the relationships between individual citizens.
3. Civil law covers such areas as contracts, family matters, employment, probate and land law.
4. The relations of citizens among themselves, and between individuals and private organizations are governed by employment law.
5. Criminal law is the legal mechanism through which individuals can assert claims against others and have those rights adjudicated and enforced.
6. As a form of private law, criminal law deals with the enforcement of particular forms of behaviour.
7. Criminal procedure is part of criminal law.
8. The same event cannot give rise to both a criminal and a civil action.

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9. The rules of procedure are the rules determining the course of an action.
10. The rules of substantive law govern the subject-matter of litigation.

1.7. Choose the most suitable word for each space:

1. Public law consists of those fields of law mainly concerned with the ... itself and the relations between private individuals and the state.
a) legislature; b) public; c) state.

2. Crimes are ... which the state has to prevent.
a) wrongs; b) offences; c) deeds.

3. Private law mainly deals with the rights and ... of individuals.
a) titles; b) duties; c) abilities.

4. A civil action (...) can be ... when one person feels wronged or injured by another person.
a) lawsuit; b) lawsuite; c) trial;
a) brought; b) begun; c) introduced.

5. Adjective law governs such matters as how the case is to be presented, in what court it shall ..., or when it is to be ....
a) present; b) perform; c) lie;
a) judged; b) tried; c) advocated.

1.8. Translate into English:

Dreptul reprezintă totalitatea regulilor, normelor de conduită stabilite sau sancţionate de stat, a căror respectare

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obligatorie este garantată de forţa de constrângere a statului, în scopul reglementării relaţiilor sociale conform voinţei acestuia.

Dreptul subiectiv se referă la prerogativa recunoscută de lege persoanelor fizice sau juridice prin care acestea pot pretinde subiectelor pasive să dea, să facă sau să nu facă ceva, folosind, la nevoie, aparatul de constrângere al statului.

Dreptul civil este acea ramură a dreptului care reglementează atât raporturi patrimoniale, cât şi nepatrimoniale. Acestea vizează condiţia juridică a persoanei fizice şi a altor subiecte de drept civil ca participanţi la raporturile juridice civile.

Dreptul procesual civil cuprinde totalitatea normelor juridice care reglementează modul în care se desfăşoară activitatea organelor judiciare, a părţilor şi a celorlalţi participanţi, precum şi raporturile ce se stabilesc între aceştia în vederea soluţionării cauzelor civile şi executării hotărârilor pronunţate în aceste cauze.

Dreptul penal cuprinde totalitatea normelor juridice care reglementează relaţiile de apărare socială, prin stabilirea acţiunilor sau inacţiunilor ce constituie infracţiuni şi a pedepselor aplicabile persoanelor care au săvârşit astfel de fapte.

Dreptul procesual penal se referă la ansamblul normelor juridice ca reguli de conduită specifică, ce reglementează desfăşurarea procesului penal.

You can use the following terms and phrases:

law s. = drept
conduct s. = conduită
to observe v.t. = a respecta
observance of/compliance with = respectare
non-observance/failure to observe/non-compliance with = nerespectare

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to guarantee/safeguard/secure = a garanta
coercive force/power = forţa de constrângere
social relations = relaţii sociale
in accordance with/in compliance with/ pursuant to = conform, în conformitate cu
right s. = drept subiectiv
natural person = persoană fizică
legal person = persoană juridică
to claim/have a claim that = a pretinde (ca)
source of law = izvor de drept
patrimonial/property relations = relaţii patrimoniale
non-patrimonial/personal relations = relaţii nepatrimoniale
to concern v.t. = a viza
to regulate v.t. = a reglementa
legal relations = raporturi juridice
procedural law = drept procesual
judicial bodies = organe judiciare
to perform/carry out an activity = a desfăşura o activitate
party s. = parte (într-un proces, conflict)
to adjudicate (on) = a soluţiona
enforcement s. = executare
judgment s. = hotărâre
action/act s. = acţiune
inaction/omission to act = inacţiune
offence s. = infracţiune
to commit v.t. = a săvârşi
body/set/totality = ansamblu
criminal trial = proces penal
criminal proceedings = procedură penală, desfăşurarea procesului penal

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1.9. Answer the following questions:

1. What is law? Give your own definition of law.
2. Define a right.
3. Which are the meanings of jurisprudence?
4. Name a few functions of law.
5. How can law improve the quality of individual life?
6. Which would be other means of social control?
7. At how many levels can you distinguish between various law branches?
8. Which are the main differences between civil law and criminal law?
9. Categories of civil law.
10. Substantive law v. adjective law.

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UNIT 2

ENGLISH LAW

Learning objectives:

In this unit, you will:

- become familiar with the basic aspects of English law history (the historical background of the *common law,* the notions of *equity* and *statute law*)
- discover the main sources of English law
- practise the relevant vocabulary (fill in the blank exercises, matching exercises, multiple choice exercises etc.)
- improve your translation skills

Reading

The Common Law

1. Definition

The most important meaning of the term 'common law' refers to that part of English law based on rules developed by the royal courts during the first three centuries after the Norman Conquest (1066) as a system applicable to the whole country, as opposed to local customs (*Oxford Dictionary of Law*).

The term can be defined from several perspectives:

a. the system of law originating in England, as distinct from the civil or Roman law;

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b. the unwritten law, especially of England, based on custom or court decision, as distinct from statute law;
c. the law administered through the system of courts established for the purpose, as distinct from equity, etc.

2. Historical background

The conquest of England by William Duke of Normandy in 1066 was a historic event with overwhelming consequences throughout the centuries.

At the time of the Norman conquest, England had neither judicature nor legislature in a mature form. The king's council and the village meeting were the main decision-making bodies which did not follow fixed rules, and matters were settled without any distinction between the processes of adjudication, administration and legislation.

The doctrine of the precedent was unknown in the sense that decisions were not constrained by the past and did not establish rules for the future, being instead subject to good order, custom and due deliberation.

3. Origins of the common law

The origins of the common law can be traced back to the 12th century along with the rapid development of the existing institutions.

After 1066, William had promised the English that they could keep their old laws. Unlike Normandy, England was already a unified nation with a central government ruling through sheriffs answerable to the king. The administration relied on written instruments under the king's seal. The taste for strong government came from the Normans, so that in less than a century after the conquest, the rudimentary court of the Anglo-Saxon kings had grown to produce two great departments of state, the Exchequer and the Chancery, as well as a judicial system whereby the king's justice was dispensed regularly by members of the king's household.

William's successors managed to increase the efficiency of their administration of the kingdom by creating a more centralized and specialized form of government.

Discover the organisation of the royal judicative power by filling in the blank spaces with the given words:

circuits, rights, crown, dominant, royal, revenue, itinerant, forfeitures, 'General Eyres', settle

The unity and consistency of the common law were promoted by the early ... position acquired by the ... courts. Royal judicative power was delegated to mainly ... justices, organised on ..., who would travel round the country holding sittings called 'Assizes' in order to hear and ... cases waiting to be tried in the county towns and enforce the king's ... Since ..., fines and amercements became an important source of royal ..., the first of these circuits, known as ..., were meant to raise this revenue and to enforce the financial rights of the ...

In its beginnings, the common law was the product of three permanent, static courts located at Westminster: the Court of the Exchequer, the Court of the Common Pleas and the Court of the King's Bench.

At present, the jurisdiction of the former courts of Exchequer and of Common Pleas is exercised by the King's (Queen's) Bench Division of the High Court of Justice.

4. Modern use of the term 'common law'

The modern use of the term 'common law' is strongly connected with the notions of equity and statute law.

In many situations, the rules of common law and those of equity overlap, and whenever there is a conflict between the two types of rules, those of equity should prevail.

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Equity

The definition of equity implies the following aspects:

a. The application of the dictates of conscience or the principles of natural justice to the settlement of disputes;
b. A system of jurisprudence or a body of doctrines and rules developed in England and followed in the United States, serving to supplement and remedy the limitations and the inflexibility of the common law.

Equity stands for that part of English law originally administered by the Lord Chancellor and later by the Court of Chancery, as distinct from that administered by the courts of common law. Under the Judicature Acts 1873-1875, with the establishment of the High Court of Justice to administer both common law and equity, the Court of Chancery was abolished.

Statute/ statutory law

Statute law denotes the written law established by enactments expressing the will of the legislature, as distinguished from the unwritten law or common law.

Word study

common law = legea nescrisă, dreptul cutumiar, drept jurisprudenţial, dreptul Anglo-Saxon
Norman Conquest = Cucerirea Normandă
to administer v.t. = a administra
statute law = ansamblu de legi scrise, însoţite de decizii din jurisprudenţă
equity s. = echitate, dreptate, drept natural (spre deosebire de dreptul scris); lege nescrisă
judicature s. = putere judecătorească
legislature s. = putere legislativă, legislatură, mandatul adunării legislative
council s. = consiliu

decision-making body = autoritate decizională
to settle v.t. = a rezolva
adjudication s. = judecată, hotărâre, decizie
to constrain v.t. = a constrânge
subject (to) adj. = supus
due adj. = datorat, cuvenit
deliberation s. = deliberare
government s. = administraţie, guvernare
to emerge v.i. = a apărea
to rule v.t. = a conduce
answerable adj. = răspunzător
seal s. = sigiliu
Chancellor of the Exchequer s. = ministru de finanţe
Lord Chancellor = cancelar, ministru al justiţiei
judicial adj. = judiciar
to dispense v.t. = a împărţi, a distribui, a face
forfeiture s. = 1. pierdere a unui drept, 2. confiscare
amercement s. = amendă, amendare
assize s. = 1. şedinţă de judecată, 2. pl. sesiuni periodice ale curţilor
Assizes = curte cu juri
Eyre = curte itinerantă din Evul Mediu
Court of the Exchequer = Curtea Eşichierului, competentă în materie financiară
Court of the Common Pleas = Curtea Plângerilor Comune, competentă în materie de proprietate funciară şi posesiune imobiliară
Court of the King's Bench = Curtea Băncii Regelui, competentă în materie penală şi de tulburare a păcii regelui
to prevail v.i. = a avea întâietate
settlement s. = rezolvare, soluţionare
to abolish v.t. = a aboli, a desfiinţa

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2.1. Match the following courts to their descriptions:

1. The Court of Exchequer
2. The Court of the Common Pleas
3. The Court of King's Bench (Queen's Bench)
4. The Court of Chancery

a) It was a court of justice which had a wide first instance jurisdiction in ordinary litigation between subjects.
b) Its function was to administer equity. It began to develop in the 15th century to provide remedies which could not be obtained in the courts of common law. Today, the court comprises the Chancery Division of the High Court of Justice.
c) It was a court of record established by William the Conqueror to recover the king's debts and duties. It was inferior to both Court of the King's Bench and the Court of the Common Pleas.
d) It was the highest English common law court, both civil and criminal, so called because the king (or queen) formerly presided. It had concurrent first instance jurisdiction over all "wrongs" with the Common Pleas and appellate and supervisory jurisdiction over all royal justice, except that within the jurisdiction of the Exchequer.

2.2. Translate into English:

Din punct de vedere istoric, dreptul anglo-saxon a luat ființă prin extinderea competenței instanțelor regale în toate regiunile din Anglia și Țara Galilor, creându-se astfel un sistem de drept 'comun' întregii Anglii, spre deosebire de cutumele și legile locale, diferite de la o regiune la alta.

Termenul definește, de asemenea, totalitatea regulilor de drept complementare noțiunilor de echitate și acte legislative.

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2.3. True or false?

1. The main use of the term 'common law' refers to the recourse to those rules derived from legislation.
2. Another meaning of common law defines it as distinct from a civil or Roman law system.
3. The Normans attempted to make new law for the country and to impose their law.
4. The Normans were mainly concerned with establishing a strong central administration and safeguarding the royal revenues.
5. The system of justices travelling around the country and holding Assizes was first meant to enforce the financial rights of the king.
6. The Court of the Exchequer was an itinerant court which played a great part in the creation of the common law.
7. The Court of King's Bench could hear appeals in both civil and criminal cases.
8. The common law developed out of equity.
9. Whenever there is a conflict between the rules at common law and those in equity, those of equity will prevail.
10. Statute law refers to the unwritten law applied to particular circumstances by the authorized powers of the state.

2.4. Answer the following questions:

1. How do you define common law?
2. Which are the main meanings of the term 'common law'?
3. Which was the situation of law and administration before the Norman conquest?
4. How did the Norman invaders influence the evolution of law in England?
5. How is common law related to the three courts located at Westminster?

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6. How can you describe the jurisdiction of the three courts: Exchequer, Common Pleas and the King's Bench?
7. Which was the role of the Court of Chancery?
8. Define equity.
9. Define statute law.
10. Which is the relation of common law to equity and statute law?

Reading

Sources of English Law

The main sources of UK law are:

- legislation (statute law)
- case law
- European Union law

Legislation (statute law) refers to enacted law, namely the law created by a legislature, i.e. the British Parliament. This kind of enacted laws are called statutes.

Legislation may be direct (laws enacted by the legislature itself, i.e. Acts of Parliament) or delegated legislation (rules or laws laid down by a body or person to whom the legislature has delegated power to make such rules).

Case law

Case law is the law created by judges in the course of judicial decisions.

Since the legal system of England and Wales is a common law system, in each case, the judges apply existing principles of law, following the precedent of earlier decisions. There is also a hierarchy of precedent. Under the doctrine of *stare decisis,* a decision made by a higher court must be followed by a lower court.

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European Union law

The UK is a Member State of the European Union, therefore EU law takes precedence over UK law.

An important source of law is the European Convention on Human Rights (ECHR). All courts in the UK have to protect the rights identified in the ECHR.

Word study

source of law = izvor de drept
statute s. = statut, lege scrisă
statute law = ansamblu de legi scrise
case law = jurisprudenţă
legislature s. = putere legislativă, legiuitor
delegated legislation = legislaţie indirectă
to lay down = a stabili, a institui
precedent s. = precedent
earlier decisions = decizii anterioare
higher court = instanţă superioară
lower court = instanţă inferioară
to take precedence over = a avea întâietate faţă de

2.5. Find synonyms in the text above for the following words and phrases:

1. legislative power = ...
2. indirect legislation = ...
3. established = ...
4. when deciding cases = ...
5. prior = ...
6. judgment = ...
7. superior = ...
8. inferior = ...
9. for that reason, hence = ...
10. to prevail over = ...

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2.6. True or false?

1. Legislation is law that is created by a legislature.
2. There is a single series of documents that contains the whole of the law of the UK.
3. The main UK legislature is Parliament, based in London.
4. The most important pieces of legislation are Acts of Parliament.
5. Delegated legislation refers to rules or laws laid down by the supreme legislative body in Britain.
6. Common law principles and practices are important in the UK legal system.
7. The decisions of superior appellate courts become part of the law and they are followed by inferior courts.
8. When a precedent is from a lower court in the hierarchy, the judge may consider it, but he is not compelled to follow it.
9. A judge has to check whether a similar situation has come before a court only if he wants to do so.
10. The legislation made by the institutions of the European Union is not a source of law in the UK.

2.7. Fill in the blank spaces with the appropriate word:

general, principle, immemorial, absorbed, scope, enforcement, reasonable, binding, precario, precedent, common, memory

Custom is the oldest source of English law. The most important customs were ... into the ... law very early, but judicial ... replaced the 14th century custom.
Customs may be ... (lying at the basis of common law) or local, local customs still creating new law, though rarely.
In order to gain recognition and ... by the courts, a local custom must meet the following requirements:

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- to be ...;
- not contrary to any statute or any fundamental ... of law;
- observed as of right, i.e. *nec vi, nec clam, nec* ... (not by force, nor secretly, nor subject to permission);
- to have been in force from 'time ...', i.e. from the end of Henry II's reign in 1189, or to have existed as long as a living person can remember, i.e. 'beyond living ...';
- definite in nature and ...;
- exercised continuously and without interruption;
- exercised peaceably;
- recognized as ... by those affected by it.

2.8. Choose the most suitable word for each space:

1. The principal ... is the UK Parliament, which is ... in London.
a) legislator; b) legislative; c) legislature;
a) found; b) based; c) situated.

2. The legislative, executive and judicial power in the UK can only be operated within the ... of EU law.
a) perspective; b) structure; c) framework.

3. Case law involves the creation of law in the course of ...
a) deciding cases; b) rendering cases; c) proceedings.

4. Some EU law becomes directly part of UK ... law without any domestic proceedings.
a) domestic; b) internal affairs; c) household.

2.9. Match the following Latin expressions with the notions they refer to:

1. *stare decisis*
2. *ratio decidendi*

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3. *obiter dictum*
4. *ejusdem generis*
5. *expressio unius est exclusio alterius*
6. *ultra vires*

a) a comment by a judge during the course of delivering a judicial opinion, but which is not essential to the decision in the case, and therefore not precedential. It means "something said in passing";
b) one of the rule or principle of interpretation which means that "the mention of one word in itself rules out a contrary meaning"/ " the expression of one thing is the exclusion of another". E.g. Since it is an offence to have an unlicensed *motor*-vehicle, it is obvious that any vehicle which is propelled other than by a motor is not included in this category. It may also be rendered by *expressum facit cessare tacitum* ("if something is expressed there is no room for implication");
c) "beyond, in excess of powers", also termed *extra vires.* It refers to something which is beyond the power authorized by law;
d) it means "to stand by things decided" and expresses the doctrine of precedent, therefore when the same points arise again in litigation, it is necessary to abide by former precedents;
e) the English translation is "of the same class". According to this rule, if several words having similar meanings, are followed by one of doubtful meaning, then that word should be interpreted as having a similar meaning to the others;
f) the principle(s) of law deduced from the facts of a case, on the basis of which the court reaches a decision. The expression means "the reason for deciding" and is binding on inferior courts, in accordance with the doctrine of precedent. If the *ratio decidendi* binds, everything else is *obiter,* therefore not bound to be followed.

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2.10. Translate into English :

Noţiunea de izvor de drept are sensul de act juridic cu valoare normativă în care sunt cuprinse regulile de drept. Această noţiune are două sensuri : izvor material, prin care se înţeleg condiţiile materiale, naturale de existenţă a societăţii, care dau conţinutul, esenţa dreptului şi izvor formal, adică formele specifice de exprimare a normelor juridice prin care se determină voinţa care a stat la baza adoptării lor.

2.11. Answer the following questions:

1. Which are the main sources of English law?
2. What is case law?
3. What is the difference between direct legislation and delegated legislation?
4. What is the role of the ECHR as source of law?
5. Explain the following Latin expressions: *stare decisis, ratio decidendi, obiter dictum.*

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UNIT 3

CONSTITUTIONAL LAW

Learning objectives:

In this unit, you will:

- acquire the most important terms related to constitutional law
- discover the key elements of constitutional law and government in the UK and the USA
- practise the relevant vocabulary by completing various exercises
- develop the ability to translate Romanian constitutional law-related terms into English

3.1. Translate the following Romanian constitutional law-related terms and expressions into English:

- a promulga/ a modifica/ a abroga o lege
- cu modificările ulterioare
- controlul constituționalității
- a acuza, a pune sub acuzare (un înalt demnitar)
- mandat
- miting pre-electoral
- alegeri parțiale, urnă de vot, cabină de vot, secție de votare, circumscripție electorală, a câștiga un loc în parlament, sufragiu
- supremația legii, suveranitate
- proiect de lege, a face o propunere de lege

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- prerogativele șefului statului
- Camera Lorzilor, Camera Comunelor, consimțământul Reginei
- fondatorii Constituției americane
- Congresul american, Senatul, Camera Reprezentanților

Make use of the list below:

- to make/ to alter/ to repeal the laws
- amend, amendment, as amended
- the legislative power/ the legislature, the executive power, the judicial power (the judiciary), separation of powers
- Constitution, preamble, constitutional/ unconstitutional, judicial review, inalienable rights, ratification
- branches of government, representative government, Cabinet, impeachment, ideology, initiative, joint committee, lobby, public domain
- concurrent powers, delegated power, express powers, implied power
- democracy, election, elector, presidential candidate, term of office, primary election, primaries (direct elections), caucuses (meetings of party representatives), recall election, by-election, ballot box, voting booth, polling station, constituency, to win a seat, majority vote (first-past-the-post system), suffrage, referendum
- federalism, federal government
- rule of law, sovereignty
- Bill of Rights, bill, to bring a bill
- Parliament, bicameral, unicameral
- the functions of the Head of State, monarch, president
- the upper House, the lower House, the House of Lords, the House of Commons, Lord Chancellor, Speaker, Lords spiritual, Lords temporal, Royal Assent, Royal Prerogative, standing committee, Whip (UK)

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- Framers of the US Constitution
- Congress, Senate, House of Representatives (US)
- Senate, Chamber of Deputies (Romania)

Reading

The British Constitution and Government

A **constitution** refers to "the rules and practices that determine the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state". (*Oxford Dictionary of Law*)

Therefore, **constitutional law** stands for the body of law deriving from the constitution and dealing primarily with governmental powers, civil rights and civil liberties.

Constitutional law also represents the body of legal rules that determine the constitution of a state with a flexible constitution. (*Black's Law Dictionary*)

From this latter perspective, the **British constitution** is considered a flexible constitution, since it is not defined or set apart in one document and not distinguishable from other law in the way in which its terms can be legislatively altered.

Although it is not written in a distinct document or group of documents, it consists of:

- statutes/ Acts of Parliament (no special procedure is required for their amendment);
- common law rules;
- constitutional conventions.

A statute (Act of Parliament) is a document passed by both Houses of Parliament (the House of Lords and the House of Commons) which sets out legal rules. An Act must also be agreed to by the Crown, in the form of Royal Assent.

Constitutional conventions are those practices which are not legally enforceable, since they are not in reality laws. They may regulate the conduct of several members of the sovereign power, of different officials etc.

The principles the constitution relies on are the rule of law (implying that everyone is subject to the laws of the land) and the sovereignty of Parliament.

In the UK, the legislative power, that is the power of making, altering or repealing the laws belongs to Parliament. The three parts of Parliament are the monarch, the House of Lords and the House of Commons (which is the focus of political attention).

General elections are held every five years, but it is possible to hold the elections sooner if the Prime Minister wants it. A general election for the House of Commons involves all UK constituencies and takes place when the monarch dissolves Parliament and summons a new one. A by-election is caused by the resignation or death of an MP during the life of a Parliament. Any dispute with regard to the validity of the election of a Member of Parliament is raised on an election petition decided by an election court consisting of two High Court Judges.

Government refers to the Cabinet ministers, ministers of state, under-secretaries and parliamentary secretaries chosen by the Prime Minister from his/her party to hold office, about 100.

A smaller group of just over 20 form the Cabinet (the executive) at the head of which is the Prime Minister.

The Cabinet is the most important and authoritative part of Government, standing today at the very centre of power in Britain.

Word study

to alter v.t. = a modifica

Royal Assent = consimţământul reginei/regelui

enforceable adj. = aplicabil, opozabil
conduct s. = comportament, conduit
sovereign s. = monarh
rule of law = supremaţia legii
constituency s. = circumscripţie electoral
to summon v.t. = a convoca
by-election(s) = alegeri parţiale (se organizează pentru ocuparea unei funcţii politice ce a devenit vacantă între procedurile de alegeri generale)
to hold office = a deţine o funcţie, a ocupa un post

3.2. Choose the right answer(s) and support your choice:

1. The British Constitution consists of:
a) statutes (laws made by Parliament);
b) important court cases;
c) established practices.

2. The king or queen represents the people as Head of State, but the real power lies in:
a) the House of Lords;
b) the House of Commons;
c) Parliament.

3. After a general election, the leader of the party which has the most seats in the House of Commons (the representative chamber of British Parliament) becomes:
a) the Foreign secretary;
b) the Home Secretary;
c) Prime Minister.

4. The Parliament is the ... in any country's political system.
a) executive body;

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b) judicial body;
c) legislative body.

3.3. Translate into English:

a) Dreptul constituţional se referă la normele juridice care reglementează relaţiile sociale dintre individ şi stat, relaţii ce apar în procesul instaurării, menţinerii şi exercitării statale a puterii.

b) Titlul I

Art. 1: Statul român

(1) România este stat naţional, suveran şi independent, unitar şi indivizibil.

(2) Forma de guvernământ a statului român este republica.

(3) România este stat de drept, democratic şi social, în care demnitatea omului, drepturile şi libertăţile cetăţenilor, libera dezvoltare a personalităţii umane, dreptatea şi pluralismul politic reprezintă valori supreme, în spiritul tradiţiilor democratice ale poporului român şi idealurilor Revoluţiei din decembrie 1989, şi sunt garantate.

(4) Statul se organizează potrivit principiului separaţiei şi echilibrului puterilor – legislativă, executivă şi judecătorească – în cadrul democraţiei constituţionale.

(5) În România, respectarea Constituţiei, a supremaţiei sale şi a legilor este obligatorie.

Titlul V

Art. 146

Curtea Constituțională are următoarele atribuții:

a) se pronunță asupra constituționalității legilor, înainte de promulgarea acestora, la sesizarea Președintelui României, a unuia dintre președinții celor două Camere, a Guvernului, a Înaltei Curți de Casație și Justiție, a Avocatului Poporului, a unui număr de cel puțin 50 de deputați sau de cel puțin 25 de

senatori, precum și, din oficiu, asupra inițiativelor de revizuire a Constituției;

b) se pronunță asupra constituționalității tratatelor sau altor acorduri internaționale, la sesizarea unuia dintre președinții celor două Camere, a unui număr de cel puțin 50 de deputați sau de cel puțin 25 de senatori;

c) se pronunță asupra constituționalității regulamentelor Parlamentului, la sesizarea unuia dintre președinții celor două Camere, a unui grup parlamentar sau a unui număr de cel puțin 50 de deputați sau de cel puțin 25 de senatori;

d) hotărăște asupra excepțiilor de neconstituționalitate privind legile și ordonanțele, ridicate în fața instanțelor judecătorești sau de arbitraj comercial; excepția de neconstituționalitate poate fi ridicată și direct de Avocatul Poporului (...).

Reading

The US Constitution and Government

The United States has a written constitution which sets out the principles of government.

The first plan of national government was not the Constitution, but a plan called the Articles of Confederation and Perpetual Union. Since it conferred sovereignty upon the states, it was considered defective as an instrument of government. The states suffered economically, and not only, from the lack of a strong central authority, from the lack of unity which caused serious problems in international relations and in the defense of the nation.

In 1787 a convention was called in Philadelphia to revise the Articles of Confederation. Instead, the leaders decided to write a constitution setting up a federal government for the states.

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Discover how the American Constitution came into being by filling in the blank spaces with the given words and phrases:

Anti-Federalists, minimize, "free government", basic rights, fulfilled, presidency, signed, governance, slavery, Bill of Rights, democracy

The purpose was to achieve a balance that Madison called "mixed government" and …, a compromise between monarchy and ….

There was a hot controversy over the means by which the objectives of the Constitution could be …. The controversy involved the … and the way in which the president was to be elected, the relationship of the states to the national government etc.

Some problems, such as the … issue, were solved by compromises.

After it was … in 1787, the Constitution was offered for ratification, which was strongly opposed by the … who feared that a powerful central government would … the role of the people in … and threaten individual rights and local interests. The significant and lasting accomplishment of the opponents was to get the … (the first ten amendments) added to the Constitution. The Bill set down such … as the freedom of speech, of religion and of the press.

Unlike the British constitution, considered a flexible constitution, since it is not defined or set apart in a distinct document and not distinguishable from other law in the way in which its terms can be legislatively altered, the U.S. Constitution appears as a rigid one. Embodied in a special and distinct enactment, it cannot be altered by ordinary forms of legislation, without the consent of three-fourths of the state legislatures or through a constitutional convention.

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The American Constitution is divided into three parts:

1. the Preamble, which tells its goals: to protect the nation and to ensure justice, peace, and liberty for all;

2. the Document - containing seven articles;

3. twenty-six Amendments which guarantee individual rights and freedoms and establish other basic principles of government.

The Constitution relies on the principle of the separation of powers. It thus shares power among three groups: the executive (the President), the legislative (Congress) and the judicial (the courts), in such a way that each has a certain authority over the others (a system of checks and balances).

The President represents the country as Head of State but also has real political power. Elections for President are held every four years and no President may own office for more than two terms.

Presidential candidates are chosen by the political parties either through Primaries (direct elections) or at state conventions or caucuses (meetings of party representatives), depending on the state.

Congress consists of two houses, the Senate (to which each state elects two senators for a period of six years) and the House of Representatives, in which the number of representatives from each state depends on its population. Bills cannot become law until they have been passed by both Houses, and if they are not passed by a two-thirds majority they can still be vetoed by the President. Bills must not conflict with the constitution.

The Federal government is responsible only for matters of national importance, such as foreign affairs, trade and defense. The governments of the individual states are responsible for all other matters.

Federal judges are appointed by the President and confirmed by the Senate. The highest court, the Supreme

Court, has the power to judge whether a law passed by the government conforms to the constitution and whether the President has acted constitutionally. If it judges that the President's behavior has been unconstitutional, he or she may be impeached (accused of a crime against the State).

Word study

to set out v.t. = a expune, a prezenta
sovereignty s. = suveranitate
defective adj. = ineficient
balance s. = echilibru
slavery s. = sclavie
Bill of Rights = Carta/ Declaraţia drepturilor omului (cele 10 amendamente ale Constituţiei SUA referitoare la drepturile fundamentale ale omului)
enactment s. = 1. promulagare, legiferare, adoptare; 2. hotărâre, decret, ordonanţă
three-fourths = trei sferturi
preamble s. = preambul
separation of powers = separaţia puterilor în stat
system of checks and balances = sistem/mecanism de echilibru al puterilor
to own office = a deţine o funcţie
term s. = mandat
caucus s. = întrunire, comitet electoral (întrunire a membrilor unui partid în vederea selectării candidaţilor sau a adoptării unei anumite politici)
bill s. = act normative, proiect de lege
to veto v.t. = a-şi exercita dreptul de veto
to impeach v.t. = a acuza, a pune sub acuzare (o persoană care deţine o funcţie oficială)

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3.4. Fill in the blank spaces with the appropriate words from the text:

1. The Unites States has a written constitution which ... the principles of government.

2. The first constitution of the United States was ..., ratified in 1781.

3. The result of the Constitutional Convention of 1787 was ....

4. After it was signed, the Constitution was offered for ....

5. Unlike the British constitution, the American Constitution is of the ... type.

6. One of the main principles of the Constitution is the ... of powers of the three ... of government.

7. The three parts of the Constitution are ..., the seven ... of the Document and the twenty-six ....

8. The first ten ..., known together as the ...of ..., set ... such bsic rights as the freedom of ..., of ... and of the ....

9. To ensure that no ... or group has too much power, the Constitution ... power among the three groups, the ... (the President), the ... (Congress) and the judicial (...), a system called of checks and ....

10. The ... of State is the President, who also has real ... power.

11. Political parties choose presidential ... through ... or by ....

12. The two chambers of the Congress are the ... and the ....

13. The .... Court decides whether the President has acted ...., and if his or her conduct has been unconstitutional, he or she may be ....

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3.5. Underline the right answer(s):

1. Since the Articles of Confederation conferred sovereignty upon the states, it was considered:
a) ineffective as an instrument of government;
b) an appropriate means of government;
c) the wrong type of government.

2. No person shall be elected to the office of President more than:
a) once;
b) twice;
c) three times.

3.The President:
a) is the head of the executive branch of the United States government;
b) has the right to veto;
c) appoints judges.

3.6. Answer the following questions:

1. What is a constitution?
2. Define constitutional law.
3. Is the British Constitution a flexible one?
4. What does the British Constitution consist of?
5. Which is the legislative power in the UK?
6. General elections v. by-elections.
7. Does the United States have a written constitution? What does it set out?
8. How did the US Constitution come into being?
9. Is it of a rigid or flexible type?
10. What is the Bill of Rights?

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11. How many parts is the American Constitution divided into? What do they contain?
12. What does the principle of the separation of powers refer to?
13. The President.
14. What does Congress consist of? What does it represent?
15. What institutions represent the judicial power?

Supplementary reading

Constitution of the United States of America

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. (...)

No person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. (...)

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No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. (…)

Judgment in Cases of Impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Article II

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years (...)

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected. (...)

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

UNIT 4

THE BRITISH PARLIAMENT

Learning objectives:

In this unit, you will:

- acquire the key notions related to the UK Parliament (the House of Lords, the House of Commons – organization and role, Bills)
- understand the election and voting system in the UK
- practice the relevant vocabulary by completing various exercises and by drawing a comparison between the British Parliament and the Romanian Parliament
- develop translation and communication skills

Reading

A Bicameral System

The British Parliament is a bicameral legislature that performs the dual function of participating in the legislative process and scrutinizing the activities of the administration. It is an essential part of UK politics, consisting of the sovereign, the House of Lords and the House of Commons.

The two-House system

The business of Parliament takes place in two Houses: the House of Commons and the House of Lords. Their work is similar: making laws (legislation), checking the work of the

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government (scrutiny), and debating current issues. The House of Commons is also responsible for granting money to the government through approving Bills that raise taxes. Generally, the decisions made in one House have to be approved by the other. In this way the two-chamber system acts as a check and balance for both Houses.

To stand as a candidate in a UK Parliamentary General Election one needs to be at least 18 years old and:

- a British citizen
- a citizen of the Republic of Ireland
- a citizen of a commonwealth country who does not require leave to enter or remain in the UK, or has indefinite leave to remain in the UK

Certain groups of people are not allowed to stand, these include:

- members of the police forces
- members of the armed forces
- civil servants and judges
- people who are subject of a bankruptcy restrictions order in England or Wales or a debt relief restrictions order
- people who have been adjudged bankrupt in Northern Ireland
- people who have had their estate sequestrated in Scotland
- aliens
- convicted prisoners and people guilty of corrupt or illegal practices

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The House of Commons

It is the representative chamber of Parliament, also known as the Lower House.

The UK public elects 650 Members of Parliament (MPs) to represent their interests and concerns in the House of Commons. This number may vary within certain limits in case the boundary commission proposes constituency changes.

The Commons is publicly elected. The party with the largest number of members in the Commons forms the government.

Members of the Commons (MPs) debate the big political issues of the day and proposals for new laws. It is one of the key places where government ministers, like the Prime Minister and the Chancellor, and the principal figures of the main political parties, work. MPs can scrutinise government policies by asking ministers questions about current issues either in the Commons Chamber or in Committees.

The Commons alone is responsible for making decisions on financial Bills, such as proposed new taxes. The Lords can consider these Bills but cannot block or amend them.

The paragraph below presents the House of Commons Commission. Fill in the blank spaces with the given words and phrases:

backbench, managed, day to day, chaired, sitting, Shadow, non-executive, make up, ballot

The House of Commons is governed and ... by the group of MPs who ... the House of Commons Commission, ... by the Speaker of the House of Commons, a ... MP elected to the position of Speaker through a ... of all MPs. The other members are the Leader of the House, the ... Leader of the

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House (or another MP appointed by the Opposition) and three ... MPs from the three largest parties.

The Commission provides the ... governance of the House by Members, but it does not manage ... operations.

The House of Lords

The House of Lords is the second chamber of the UK Parliament. Its work is complementary to the work of the House of Commons. It thus makes laws, holds government to account and investigates policy issues. Its membership is mostly appointed and includes experts in many fields.

There are things that Lords don't do: represent constituencies, get involved in taxation, draw a salary (except for some office holders).

The Lords currently has around 830 Members, belonging to three categories: life Peers, bishops and elected hereditary Peers. Unlike MPs, the public do not elect the Lords. The majority are appointed by the Queen on the recommendation of the Prime Minister or of the House of Lords Appointments Commission.

(1) Life Peers

This name derives from the fact that these Lords' titles are not passed on to their children, they are appointed for their lifetime only. The Queen formally appoints life Peers on the advice and recommendation of the Prime Minister.

(2) Archbishops and bishops

A limited number of 26 Church of England archbishops and bishops sit in the House, passing their membership on to the next most senior bishop when they retire. The Archbishops of Canterbury and York traditionally get life peerages on retirement.

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(3) Elected hereditary Peers

The right of hereditary Peers to sit and vote in the House of Lords was ended in 1999 by the House of Lords Act but 92 Members were elected internally to remain until the next stage of the Lords reform process.

Two events have changed the way Members of the House of Lords are appointed: the 1999 House of Lords Act, which ended hereditary Peers' right to pass membership down through family, and the introduction of the House of Lords Appointments Commission. There are now a number of routes to becoming a Member of the House of Lords.

The House of Lords Appointments Commission is an independent, public body. Set up in May 2000, it recommends individuals for appointment as non-party-political life peers and vets nominations for life peers to ensure the highest standards of propriety.

UK Supreme Court

The Constitutional Reform Act 2005 removed the judicial function of the House of Lords from Parliament and set up a new, independent supreme court (from October 2009).

The Supreme Court of the United Kingdom assumes jurisdiction on points of law for all civil law cases in the UK and all criminal cases in England and Wales and Northern Ireland.

Word study

bicameral/two-House/two-chamber system = sistem bicameral
to scutinise v.t. = a examina, a supraveghea
House of Lords = Camera Lorzilor
House of Commons = Camera Comunelor
to grant v.t. = a acorda
to stand as a candidate = a candida
leave s. = permisiune

civil servant = funcţionar public
bankruptcy s. = faliment, incapacitate de plată
debt s. = datorie, debit
relief s. = recuperare, remediere
to adjudge v.t. = a judeca, a hotărî, a declara
alien s. = străin
to convict v.t. = a condamna
constituency s. = circumscripţie electorală
backbencher s. = (UK) membru al parlementului fără funcţie guvernamentală
ballot s. = vot
to hold to account = a trage la răspundere
Peer s. = pair, nobil (la feminin, *Peeress*)
Life Peer = pair pe viaţă
peerage s. = pairi, nobilime (în vechea Cameră a Lorzilor)
bishop s. = episcop
to vet v.t. = a verifica
propriety s. = conformitate

4.1. Match the following routes to becoming a Member of the House of Lords to their descriptions:

1. Ad hoc announcements
2. Speakers
3. Dissolution Honours
4. Political lists/'working peers'
5. Resignation Honours
6. Archbishops and bishops

a) It takes place at the end of a Parliament, when peerages can be given to MPs - from all parties - who are leaving the House of Commons.
b) It refers to the fact that resigning Prime Ministers can recommend peerages for fellow politicians, political advisors or others who have supported them.

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c) Lords appointed to boost the strengths of the three main parties. Regular attendance in the House is expected, usually on the frontbench as a spokesman or whip. The media has dubbed these Members 'working Peers'.
d) They are used to announce someone appointed as a Minister who is not already a Lord.
e) If a vacancy comes up the most senior serving bishop is appointed. The Archbishops of Canterbury and York usually get life peerages on retirement.
f) Traditionally, peerages are awarded to former Speakers of the House of Commons.

4.2. True or false?

1. The business of Parliament takes place in the two Houses: the House of Commons and the House of Lords.
2. The two chambers are involved in the legislative process together with the monarch.
3. The government is publicly elected.
4. MPs consider and propose new laws, also authorizing government spending of the public money.
5. The one who presides over the House of Commons is the Speaker, elected through a ballot of all MPs.
6. The Lords also represents constituencies and makes decisions on financial Bills.
7. A life peer is a peer who cannot pass on his title to his children.
8. Hereditary Peers still enjoy the right to pass membership from one generation to another.
9. Politicians can become Members of the House of Lords on the recommendation of a Prime Ministers who resigns.
10. The House of Lords is the highest court of appeal for civil cases in the UK and for criminal cases in England, Wales and Northern Ireland.

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4.3. Choose the right answer(s):

1. The main roles of Parliament are:
a) Examining and challenging the work of the government (scrutiny);
b) Debating and passing all laws (legislation);
c) Enabling the government to raise taxes.

2. At the head of the governance structure of the House of Commons is:
a) the select committee;
b) the boundary commission;
c) the House of Commons Commission.

3. The Upper House works with the House of Commons to:
a) make laws;
b) check and challenge the actions of the government;
c) provide a forum of independent expertise.

4. Members of the Lords:
a) have a mainly ceremonial role;
b) play a vital role in making laws;
c) keep a check on government.

Reading

Bills

A Bill is a proposal for a new law, or a proposal to change an existing law that is presented for debate before Parliament. Bills are introduced in either the House of Commons or House of Lords for examination, discussion and amendment. When both Houses have agreed on the content of a Bill it is then presented to the reigning monarch for approval

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(known as Royal Assent). Once Royal Assent is given a Bill becomes an Act of Parliament and is law.

An Act of Parliament creates a new law or changes an existing law. Once implemented, an Act is law and applies to the UK as a whole or to specific areas of the country.

Different types of Bills can be introduced by:

- The government
- Individual MPs or Lords
- Private individuals or organizations

There are three different types of Bill: Public, Private and Hybrid Bills.

Draft Bills

Draft Bills are Bills issued for consultation before being formally introduced to Parliament.

Passage of a Bill

Here are the stages a Bill goes through before it becomes law.

Bill starting in the House of Commons	Bill starting in the House of Lords
• House of Commons 1. First reading 2. Second reading 3. Committee stage 4. Report stage 5. Third reading • House of Lords 1. First reading 2. Second reading 3. Committee stage 4. Report stage	• House of Lords 1. First reading 2. Second reading 3. Committee stage 4. Report stage 5. Third reading • House of Commons 1. First reading 2. Second reading 3. Committee stage 4. Report stage

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5. Third reading • Consideration of amendments • Royal Assent	5. Third reading • Consideration of amendments • Royal Assent

Putting the Act into force

An Act may come into force immediately, on a specific starting date, or in stages.

The practical implementation of an Act is the responsibility of the appropriate government department, not Parliament. For example, laws relating to transport issues would come under the administration of the Department for Transport.

Changes to Acts

Future changes to the law happen through the passing of another Act or delegated legislation. An Act can also be repealed so that its provisions no longer apply. Parliamentary committees examine UK laws and recommend the removal of out of date legislation.

Delegated legislation

Delegated or secondary legislation is usually concerned with detailed changes to the law made under powers from an existing Act of Parliament.

4.4. Odd one out:

a) Bill, Draft Bill, drafting a bill, Act;
b) draft bills, public bills, private bills, hybrid bills;
c) first reading, second reading, Committee stage, Royal Assent;
d) primary legislation, passed legislation, secondary legislation, delegated legislation.

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4.5. Make the right choice(s):

1. A Bill is:
a) a draft law;
b) introduced in both Houses concurrently;
c) becomes an Act if it is approved by a majority in the House of Commons and House of Lords, and formally agreed to by the reigning monarch.

2. An Act is:
a) a Bill starting in the House of Lords;
b) a Bill approved by both Houses to which the Royal Assent has been given;
c) creates a new law or changes an existing law.

3. When a bill has been read … in one House, it is sent to the other, where it has to undergo the same process.
a) once;
b) two times;
c) three times.

Reading

Elections and Voting in the UK

The House of Commons, devolved assemblies and mayors in the UK are elected using different voting systems. The House of Commons and the House of Lords use a variety of voting systems for internal elections.

General elections

When Parliament is dissolved every seat in the House of Commons becomes vacant and a general election is held.

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The Fixed Term Parliament Act, passed on 15 September 2011, provides for general elections to be held on the first Thursday in May every five years.

MPs are elected from a choice of candidates by a simple majority system in which each person casts one vote. The candidate with the most votes then becomes the MP for that constituency.

Candidates may be from a political party registered with the Electoral Commission or they may stand as an 'Independent' rather than represent a registered party.

Most voting takes place in polling stations (the traditional method of voting), but anyone eligible to vote can apply for a postal vote. British citizens living abroad are also entitled to a postal vote as long as they have been living abroad for less than 15 years.

An additional way to vote is by proxy, which can be useful if one is unable to get to a polling station. A proxy vote means that such a person appoints someone he trusts to vote on his behalf. This can be helpful if one falls ill or if he is abroad on Election Day. Anyone over 18 can apply for a proxy vote if he is on the electoral register and he provides a reason.

By-elections

A by-election takes place when a seat in the House of Commons becomes vacant between general elections.

A seat becomes vacant during the lifetime of a Parliament either when an MP resigns from Parliament or in case an MP has died. A seat may also be declared vacant because of a Member's bankruptcy, mental illness or conviction for a serious criminal offence.

Parliamentary constituencies

The UK is currently divided into 650 parliamentary constituencies, each of which is represented by one MP in the House of Commons.

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Voting systems

Voting systems, also known as electoral systems, are the method by which representatives are elected. A voting system determines the rules on how parties and candidates are elected.

A number of different voting systems are used to elect mayors and representatives to the House of Commons, Scottish Parliament, National Assembly for Wales, Northern Ireland Assembly, European Parliament and, UK local authorities.

First-past-the-post

First-past-the-post is used to elect MPs to the House of Commons and for local elections in England and Wales.

Under first-past-the-post, the UK or local authority is divided into numerous voting areas, i.e. constituencies or wards. At a general or local election, voters put a cross (X) next to their preferred candidate on a ballot paper.

Ballot papers are then counted and the candidate that has received the most votes is elected to represent the constituency or ward.

Alternative Vote (AV)

Fill in the blank spaces with the given words:

ballot paper, reallocated, elimination, chairs, by-elections, threshold, preference, rank

The Alternative Vote is used to elect the majority of … of select committees in the House of Commons. The AV is also used for the election of the Lord Speaker and … for hereditary peers.

Under AV, voters… candidates in order of preference by marking 1, 2, 3 and so on next to names of candidates on a … A voter can rank as many or as few candidates as they like or just vote for one candidate.

Ballot papers are then counted by using the first preference votes (i.e. those with a number 1 marked next to their name). If a candidate receives more than 50 per cent of the first … votes then they are elected.

If no candidate reaches this 50 per cent ..., then the candidate with the fewest first preference votes is eliminated. Their second preference votes are then ...to the remaining candidates. If after this stage one candidate has more votes than the other remaining candidates put together, that candidate is elected.

If not, the process of ... and reallocation of preference votes is repeated until one candidate has more votes than the other remaining candidates put together, and is then elected.

Other voting systems are:

- Supplementary Vote (SV)
- Single Transferable Vote (STV)
- Additional Member System (AMS)
- Closed Party List

Word study

to devolve v.t. = a delega, a transfera
mayor s. = primar
voting system = sistem de vot
to dissolve v.t. = a dizolva
seat s. = loc
to cast one's vote = a-şi exprima votul
polling station = secţie de votare
postal vote = vot prin corespondenţă
by proxy = prin reprezentare
first-past-the-post system/majority system = votul maorităţii
threshold s. = prag

4.6. Make the right choice(s):

1. There are several ways you can vote in the UK:
a) in person or by a postal vote;
b) by post or by proxy;
c) in person, by post, by proxy.

2. A seat in the House of Commons may be declared vacant:
a) in case an MP becomes mentally ill;
b) if an MP takes up a job which by law cannot be done by an MP;
c) if an MP dies.

4.7. Translate the following articles excerpted from the Romanian Constitution into English:

Art. 36
(1) Cetăţenii au drept de vot de la vârsta de 18 ani, împliniţi până în ziua alegerilor inclusiv.
(2) Nu au drept de vot debilii sau alienaţii mintal, puşi sub interdicţie, şi nici persoanele condamnate, prin hotărâre judecătorească definitivă, la pierderea drepturilor electorale.
Art. 38
În condiţiile aderării României la Uniunea Europeană, cetăţenii români au dreptul de a alege şi de a fi aleşi în Parlamentul European.
Art. 76
(1) Legile organice şi hotărârile privind regulamentele Camerelor se adoptă cu votul majorităţii membrilor fiecărei Camere.
(2) Legile ordinare şi hotărârile se adoptă cu votul majorităţii membrilor prezenţi din fiecare Cameră.
(3) La cererea Guvernului sau din proprie iniţiativă, Parlamentul poate adopta proiecte de legi sau propuneri legislative cu procedură de urgenţă, stabilită potrivit regulamentului fiecărei Camere.
Art. 77
(1) Legea se trimite, spre promulgare, Preşedintelui României. Promulgarea legii se face în termen de cel mult 20 de zile de la primire.

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(2) Înainte de promulgare, Preşedintele poate cere Parlamentului, o singură dată, reexaminarea legii.
(3) Dacă Preşedintele a cerut reexaminarea legii ori dacă s-a cerut verificarea constituţionalităţii ei, promulgarea legii se face în cel mult 10 zile de la primirea legii adoptate după reexaminare sau de la primirea deciziei Curţii Constituţionale, prin care i s-a confirmat constituţionalitatea.
Art. 78
Legea se publică în Monitorul Oficial al României şi intră în vigoare la 3 zile de la data publicării sau la o dată ulterioară prevăzută în textul ei.

4.8. Answer the following questions:

1. What does the British Parliament consist of?
2. Which is the role of the two chambers?
3. Who can stand as a candidate in a UK Parliamentary General Election?
4. The House of Commons – organization and role.
5. The House of Lords - organization and role.
6. Name a few routes to becoming a Member of the House of Lords.
7. Which is the final court of appeal in the United Kingdom?
8. What is a Bill?
9. What is a Draft Bill?
10. Which are the stages that a Bill has to go through before it becomes law?
11. What does delegated legislation deal with?
12. When is a general election held?
13. Where and how can voting take place?
14. What do by-elections refer to?
15. Explain the 'First-past-the-post' voting system.

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UNIT 5

THE LEGAL PROFESSION

Learning objectives:

In this unit, you will:

- access the key terms related to the legal profession in the UK (solicitors, barristers, emerging legal professions)
- be able to point out the main differences between lawyers in England and Wales and lawyers in Romania
- practise the relevant vocabulary by completing various exercises
- develop translation and communication skills

5.1. Match the following words and phrases with their definitions:

1. lawyer
2. attorney at law
3. barristers
4. solicitors
5. legal executives
6. paralegals (England and Wales)
7. Inns of Court
8. Law Society
9. to be called to the Bar
10. rights of audience
11. pupillage

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12. training contract

a) the final stage of the route to qualification at the Bar, in which the pupil gains practical training under the supervision of an experienced barrister;
b) together with solicitors, they work in private practice, local government and industry;
c) the practical training of solicitors, similar to the pupillage stage for barristers;
d) to become a barrister;
e) ancient legal institutions in London that barristers must join;
f) a general term denoting a licensed legal practitioner, that covers both solicitor and barrister;
g) the ability to act as an advocate in a court;
h) they provide specialist legal advice and represent their clients in courts and tribunals;
i) a lawyer qualified to represent clients in legal proceedings (US);
j) the professional body for solicitors in England and Wales;
k) they provide expert legal support and advice to clients;
l) also called unqualified legal assistants, they perform substantive legal work requiring knowledge of the law and procedures.

Reading

The term 'lawyer' is a general term. As a member of the legal profession, a lawyer has to give legal advice and assistance to clients and represent them in court or in other legal matters.

Actually, the legal profession in England and Wales is divided into two main branches: solicitors and barristers.

In the United States of America, there is only one branch of the qualified legal profession, consisting of attorneys.

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Barristers

Barristers (in England and Wales) are specialists in advocacy, representing their clients in court and also providing specialist legal advice. They are usually hired by solicitors to represent a case in court. When a solicitor instructs a barrister, he prepares a document known as 'instructions to counsel' or a 'brief to counsel'. Therefore, a barrister is also referred to as 'counsel'.

Barristers increasingly specialise in particular areas of law such as commercial law, criminal law, chancery law (estates and trusts) etc.

Self-employed barristers work in offices called chambers.

What barristers do

Discover the range of activities barristers are involved in by filling in the blank spaces with the given words and expressions:

settlements, law, arguments, drafting, opinion, case, court, witnesses

- advising clients on the ... and the strength of their legal .../ brief;
- providing counsel's ...;
- representing clients in ... (preparing and presenting the case, examining and cross-examining ..., summing up all relevant material, presenting ... in court etc);
- negotiating ... with the other side;
- researching relevant points of law;
- ... legal documents.

Education and training

There are three stages of training prior to full qualification:

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1. academic stage: degree in law (three years full-time), or in any other subject followed by the conversion course (GDL – Graduate Diploma in Law);
2. vocational stage: the Bar Professional Course (BPTC), one year full-time or two years part-time;
3. pupillage: for one year in an authorised pupillage training organisation (either barristers' chambers or another approved legal environment).

The Inns of Court

In order to become a barrister, one has to register in one of the four Inns of Court, i.e. Middle Temple, Inner Temple, Gray's Inn and Lincoln's Inn.

The Inns of Court play an important role in the education and training of barristers, having the sole right to call members to the Bar. They also deal with the discipline of barristers, including the severe sanction of removing a barrister.

Junior barristers v. QC's

When a person is called to the bar, he becomes a junior barrister and he remains so until he decides to 'take silk', thus becoming a Queen's Counsel (or King's Counsel during the reign of a male sovereign). When a member of the Inn is appointed a QC, he is called *into* the bar (as distinct from '*to* the bar').

Solicitors

Solicitors undertake the general aspects of giving legal advice and conducting legal proceedings. They have rights of audience in the lower courts and, if they have acquired appropriate advocacy qualification, in the higher courts. They also prepare cases for barristers to present in superior courts.

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What solicitors do

Discover the range of activities solicitors are involved in by filling in the blank spaces with the given words and expressions:

rights, higher, lower, expert, transactions, will, assistance, instructing, county

- providing ... legal advice and ..., especially on the issues people regularly encounter, such as buying a house, drawing a ... etc;
- assisting commercial ...;
- supporting the community and protecting the ... of individuals;
- ... barristers;
- representing clients in the ... courts (magistrate court, ... court and tribunal) and, with relevant qualification, in ... courts.

Education and training

There are three stages of training for solicitors:

1. academic stage: degree in law (three years full-time), or in any other subject followed by the Common Professional Examination/ Graduate Diploma in Law - GDL;
   Another route is through the Institute of Legal Executives.
2. vocational stage: the Legal Practice Course – one year full-time;
3. practice-based training (training contract) incorporating the Professional Skills Course – two years full-time.

One can practise as a solicitor if one has been admitted to the roll, after completing the degree, the Legal Practice Course, Professional Skills Course and practice-based training.

Word study

lawyer s. = avocat; jurist; consilier juridic
attorney/attorney-at-law s. = (US) avocat
barristers. = (UK) avocat pledant
solicitor s. = (UK) avocat; notar; consilier juridic
advocate s. = avocat
counsel s. = avocat pledant, consilier juridic
Inns of Court = (UK) organizaţie profesională a avocaţilor pledanţi (barristers) din Londra
Law Society = organizaţie profesională a avocaţilor (solicitors)
degree in law = licenţa în drept
to complete a degree = a-şi lua licenţa în drept
training s. = pregătire, educaţie, calificare
right of audience = dreptul de a pleda
pupillage s. = (UK) stagiu pe lângă un avocat pledant
training contract = (UK) stagiu pe lângă un avocat
to be called to the bar = a fi admis în barou (barristers)
to be admitted to the roll = a fi admis în barou (solicitors)
legal advice = consultanţă juridică
chancery law = ramură a dreptului ce priveşte administrarea bunurilor, acţiunile ipotecare, sarcinile imobiliare etc.
estate s. = proprietate imobiliară
trust s. = fiducie
self-employed = independent
chamber s. = cabinet (de avocatură)
case/brief s. = dosar
to cross-examine v.t. = a examina martorul părţii adverse
to draft v.t. = a redacta
will s. = testament
lower/inferior courts = instanţe inferioare
higher/superior courts = instanţe superioare
county s. = comitat, district, diviziune administrativ-teritorială
county court = (UK) instanţă locală/regională

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5.2. Which are the main differences between the two branches of the legal profession in the UK?

Barristers	Solicitors
-they have the right of audience in all courts - ..... - ..... - ..... -	- they have the right of audience in inferior courts and, with appropriate advocacy qualification, in superior courts - ..... - .....

5.3. True or false?

1. Nobody in the United Kingdom is a "lawyer" per se, but has a more specific title.

2. Barristers are often thought to be the specialist advocates.

3. A person's right to appear in the courts and perform advocacy does not depend on the court and the type of case.

4. Pupillage is the period of training for solicitors.

5. A pupil-master is entitled to train pupils.

6. Often, solicitors will refer work to a barrister, and it is never possible for a member of the public to go directly to a barrister for advice or representation.

7. The "Cab-rank rule" refers to the obligation of a barrister to accept any work in a field in which he professes to practise in relation to work appropriate to his experience and seniority and irrespective of whether his client is paying privately or is publicly funded.

8. A solicitor can appear in court, if they have an additional qualification to do so.

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9. A lot of senior barristers are made Queen's Counsel as a mark of eminence in their profession.

10. After completing the training stages, a solicitor is called to the Bar.

5.4. Here is a list of the courses that the Faculty of Law, University of Oxford, offers. Translate them into Romanian and after reading the descriptions below, try to briefly describe three of your own courses.

Law Moderations (Phase I) - Law Moderations are preliminary examinations in Criminal Law, Constitutional Law, and Roman Law, taken at the end of the second term in the first year of the BA. Students must pass them in order to continue in the BA; the degree is awarded on the basis of the FHS Examinations.

A Roman Introduction to Private Law

This subject is an introduction to legal concepts and legal thought, which for centuries have been directly influenced by Roman Law.

The course has five sections: I. Sources of Law and the Scheme of the Institutes; II. Property; III. Obligations (A) Contract, (B) Delict (Tort); IV. Influence of Roman Law (…).

Constitutional Law

This course covers the law of the constitution, including the structure and basic principles of the British constitution, and the impact of European Community law on the constitution. It also provides an introduction to the protection of human rights in English law.

Criminal Law

The course deals with the following: (i) General principles of criminal liability: actus reus and mens rea, omissions, causation, negligence, strict liability, complicity and inchoate offences. (ii) General defences. (iii) The law relating to

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offences against the person (including sexual offences) and offences against property and other economic interests (…).

FHS (Phase II)

The degree is awarded on the basis of nine final examinations at the end of the three-year course (or four years in the case of Law with Law Studies in Europe) (…).

Administrative Law, Contract, Jurisprudence, Land Law, Tort, Trusts

FHS - Final Year (Phase III)

European Union Law, Commercial Law, Commercial Leases, Company Law, Comparative Private Law, Competition Law and Policy, Constitutional Law (Senior Status only), Copyright, Patents and Allied Rights, Copyright, Trade Marks and Allied Rights, Criminal Law (Senior Status only), Criminology and Criminal Justice, Environmental Law , European Human Rights Law, Family Law, History of English Law, International Trade, Labour Law, Medical Law and Ethics, Moral and Political Philosophy, Personal Property, Public International Law, Roman Law (Delict), Taxation Law

Note that:

BA in Law (technically 'Bachelor of Arts in the Final Honour School of Jurisprudence') is the regular three year undergraduate law degree, equivalent to what in some universities would be called an LLB. It is also a 'qualifying law degree' for the purpose of practice as a solicitor or barrister in England and Wales.

5. 5. The following translations about legal professions in Romania have been done by the European Commission service. Compare the versions in the two languages and draw a list of equivalences. Do you agree with the translation solutions?

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e.g. *profesie juridică* = legal profession
procuror = prosecutor
parchete de pe lângă curțile de apel = prosecutor's offices attached to courts of appeal
.....
.....
.....

În România există următoarele profesii juridice: procurori, judecători, avocați, consilieri juridici, notari publici, executori judecătorești, grefieri.	In Romania, the following legal professions are practised: prosecutors, judges, lawyers, legal advisers, notaries public, judicial enforcement officers, clerks of court.
Procurori **Organizare** În România, în cadrul Ministerului Public, funcționează: Parchete de pe lângă curțile de apel, tribunale, tribunale pentru minori și familie și judecătorii; Parchete de pe lângă instanțele militare (...)	**Prosecutors** **Organisation** The Romanian Public prosecution Service includes: prosecutor's offices attached to courts of appeal, tribunals, children's and family tribunals, and district courts prosecutor's offices attached to military courts
Consiliul Superior al Magistraturii (CSM) este organismul central din cadrul sistemului judiciar responsabil de reglementarea profesiei de procuror. Formarea profesională inițială și continuă a judecătorilor și procurorilor este asigurată de **Institutul Național al Magistraturii** (INM), o instituție publică cu personalitate juridică,	**Superior Council of Magistracy** is the central body responsible within the judicial system for regulating the profession of prosecutor. Initial and continuing professional training for judges and prosecutors is provided by the **National Institute of Magistracy**, which is a public body with legal personality under

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aflată în coordonarea Consiliului Superior al Magistraturii. **Ministerul Public** își exercită atribuțiile prin procurori constituiți în parchete. Acestea din urmă funcționează pe lângă toate instanțele, cu excepția tribunalelor specializate în cauzele cu profesioniști.	the coordination of the Superior Council of Magistrates. **The Public Prosecution Service** discharges its tasks through prosecutors working in prosecutor's offices. The latter can be found attached to all the courts, with the exception of professional conduct tribunals.
Urmărirea penală efectuată de către parchetele de pe lângă curțile de apel, tribunale, tribunale pentru minori și familie și judecătorii.	**Criminal proceedings carried out by prosecutor's offices attached to courts of appeal, tribunals, or children's and family tribunals**
Ierarhia instituțională a parchetelor se prezintă după cum urmează:	**The institutional hierarchy** of prosecutor's offices is as follows:
În vârful ierarhiei se află **Parchetul** de pe lângă **Înalta Curte de Casație și Justiție** (Parchetul General), care este condus de Procurorul General al României. Acesta coordonează activitatea parchetelor de pe lângă cele 15 curți de apel. (...)	The highest body is the **Prosecutor's Office** attached to the **High Court of Cassation and Justice** (Prosecutor-General's Office), headed by the Prosecutor-General of Romania. This body coordinates the activities of the prosecutor's offices attached to the 15 courts of appeal.
În cadrul Parchetului de pe lângă Înalta Curte de Casație și Justiție funcționează **două structuri specializate separate**. Acestea sunt:	**Two separate specialised structures** operate within the Prosecutor's Office attached to the High Court of Cassation and Justice. They are:
Direcția Națională Anticorupție (DNA), responsabilă pentru investigarea și efectuarea urmăririi penale a infracțiunilor de corupție. Aceasta este condusă	**National Anticorruption Directorate (DNA)**, responsible for investigating and prosecuting corruption. It is headed by a chief prosecutor.

POLIMEC CENTRUL DE LIMBI

de un procuror șef. **Direcția de Investigarea a Infracțiunilor de Criminalitate Organizată și Terorism** (DIICOT), responsabilă de investigarea și urmărirea penală a infracțiunilor de criminalitate organizată și terorism. Aceasta este condusă de un procuror șef care acționează în coordonarea Procurorului General al României. (...)	**Directorate for Investigating Organised Crime and Terrorism (DIICOT)**, responsible for investigating and prosecuting organised crime and terrorism. It is headed by a chief prosecutor acting under the coordination of the Prosecutor-General of Romania.
Procurorii își desfășoară activitatea potrivit principiilor **legalității**, ale **imparțialității** și ale controlului **ierarhic**.	Prosecutors act in compliance with the principles of **legality**, **impartiality** and **hierarchical control**.
Procurorii respectivi își exercită atribuțiile în conformitate cu legea, respectă și protejează demnitatea umană și apără drepturile indivizilor. (...)	Prosecutors act in accordance with the law, to observe and protect human dignity, and defend the rights of individuals.
Roluri și obligații În România există două categorii de procurori: **Procurori civili,** care sunt responsabili pentru investigarea și urmărirea penală a infracțiunilor săvârșite de civili. **Procurorii militari,** care sunt responsabili pentru investigarea și urmărirea penală a infracțiunilor săvârșite în general de personalul militar. Categoriile de procurori care își desfășoară activitatea la nivel național sunt:	**Role and duties** In Romania, there are two categories of prosecutors: **civil prosecutors**, responsible for investigating and prosecuting criminal offences committed by civilians; **military prosecutors**, responsible for investigating and prosecuting criminal offences committed mainly by military personnel. The national categories of prosecutors are the following:

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Procurorul General al României (șef al Parchetului de pe lângă Înalta Curte de Casație și Justiție);	**Prosecutor-General of Romania** (head of the Prosecutor's Office attached to the High Court of Cassation and Justice);
Procurorul Șef (șef al DNA și DIICOT);	**Chief Prosecutor** (head of the DNA and the DIICOT);
Procurorii Generali (șefi ai Parchetelor de pe lângă Curțile de Apel);	**head prosecutors** (heads of the prosecutors' offices attached to courts of appeal);
Prim-procurori (șefi ai Parchetelor de pe lângă tribunale și judecătorii);	**first prosecutors** (heads of the prosecutors' offices attached to tribunals or district courts);
Procurorii șefi de secție (șefi ai secțiilor interne ale Parchetelor);	**heads of section** (heads of internal sections of prosecutor's offices);
Procurorii șefi de serviciu (șefi ai serviciilor interne ale Parchetelor);	**heads of department** (heads of internal departments of prosecutor's offices);
Procurorii șefi de birou (șefi ai birourilor interne ale Parchetelor) și	**heads of office** (heads of internal offices of prosecutor's offices);
Procurorii. (...)	**prosecutors.**
Parchetul de pe lângă Înalta Curte de Casație și Justiție transmite Consiliului Superior al Magistraturii și Ministrului Justiției un raport anual cu privire la activitățile sale, care prezintă concluziile sale în acest sens Parlamentului României.	The Prosecutor's Office attached to the High Court of Cassation and Justice submits annual activity reports to the Superior Council of Magistracy and the Minister for Justice, who in turn presents his conclusions on the report to the Romanian Parliament.
Judecători	**Judges**
Organizare	**Organisation**
Organismul central din cadrul sistemului judiciar responsabil cu reglementarea profesiei de judecător este **Consiliul**	The central body within the judicial system responsible for regulating the profession of judge is the **Superior Council of**

Superior al Magistraturii (CSM). Formarea profesională inițială și continuă a judecătorilor și procurorilor este asigurată de **Institutul Național al Magistraturii** (INM) o instituție publica cu personalitate juridică, aflată în coordonarea Consiliului Superior al Magistraturii.	**Magistracy** (CSM). Initial and on-going professional training for judges and prosecutors is provided by the **National Institute of Magistracy** (INM), a public body with legal personality under the coordination of the Superior Council of Magistracy.
Roluri și atribuții În România, judecătorii sunt specializați în soluționarea următoarelor tipuri de cauze: cauze civile și de executare silită în materie civilă; cauze penale și de punere în executare a hotărârilor pronunțate în materie penală; cauze comerciale (judecător sindic); cauze în materie de dreptul familie și minori; cauze de contencios administrativ și fiscal/financiar; cauze în materie de conflicte de muncă și asigurări sociale; cauze de drept constituțional; cauze militare.	**Role and duties** In Romania, judges specialise in the following categories of cases: civil and civil enforcement cases; criminal and criminal enforcement cases; commercial cases (bankruptcy judges); cases under family and children's law; administrative and fiscal/financial cases; cases involving labour disputes and social insurance; constitutional cases; military cases;
Organizarea profesiei juridice: avocați **Avocați** Organismul central al profesiei de avocat este **Uniunea Națională a Barourilor din România** (UNBR), persoană juridică de interes public, formată din toate barourile din România. Aceasta asigură exercitarea	**Organisation of the legal profession: lawyers** **Lawyers** The central body responsible for the profession of lawyers is the **Romanian National Union of Bar Associations** (UNBR), which is a legal person of public interest comprising all bar associations in Romania. This

calificată a dreptului la apărare, competența și disciplina profesională, protecția demnității și onoarei avocaților membri. Toate barourile din România fac parte din UNBR.	ensures qualified exercise of the right of defence, professional competence and discipline, and the protection of the dignity and honour of lawyers who are members thereof. All Romanian bar associations are members of the Romanian National Union of Bar Associations.
Consilieri juridici Potrivit legii, consilierii juridici se pot asocia în structuri județene, pe ramuri sau domenii de activitate, potrivit intereselor profesionale, și, după caz, la nivel național, cu respectarea legii privind asociațiile și fundațiile. Dintre asociațiile profesionale constituite în temeiul legii privind asociațiile și fundațiile menționăm **Uniunea Colegiilor Consilierilor Juridici din România** (UCCJR). Aceasta este constituită din toate colegiile consilierilor juridici, organizate în fiecare județ. Consilierii juridici se pot asocia și în alte asociații profesionale.	**Legal advisers** Under the law, legal advisers may form county-level associations, by sector or area of activity according to their professional interests, or, where applicable, national associations, subject to the law on associations and foundations. One of the professional associations set up in accordance with the law on associations and foundations is the **Union of Romanian Associations of Legal Advisers** (UCCJR). This Union includes all the associations of legal advisers in all counties. Legal advisers may also form other professional associations.
Notari publici **Organizare** Prin lege, Ministerul Justiției din România a delegat exercitarea activității notariale - serviciu de interes public către **Uniunea Națională a Notarilor Publici (UNNP). Uniunea Națională a**	**Notaries Public** **Organisation** In accordance with the law, the Romanian Ministry of Justice has delegated the exercising of notarial services to the **National Union of Notaries Public** (UNNP). The **National Union of**

Notarilor Publici este organismul profesional al notarilor publici, responsabil de organizarea profesiei de notar public, apărarea intereselor profesionale ale membrilor săi și a prestigiului profesiei. Toți notarii publici sunt membri ai Uniunii. Notarii publici sunt organizați în 15 Camere ale Notarilor Publici, fiecare funcționând pe lângă o curte de apel.	**Notaries Public** is the professional body representing the notaries public, and is responsible for organising the profession of notary public, and defending the professional interests of its members and the standing of this profession. All notaries public are members of this Union. Notaries public are grouped in 15 Chambers of Notaries Public, each of which is attached to a court of appeal.
Rol și atribuții	**Role and duties**
În România, notarii publici furnizează următoarele servicii juridice:	In Romania, notaries public provide the following legal services:
întocmirea actelor necesare în materia moștenirii legale și testamentare;	drawing up the necessary documents for legal and testamentary succession;
încheierea de contracte (contracte de vânzare-cumpărare, contracte de schimb, contracte de întreținere, contracte de donație, contracte de ipotecă, contracte de gaj și contracte de locațiune, contracte de închiriere) și de alte acte (acte de garanție solicitate de diverse instituții pentru administratorii acestora);	concluding contracts (sales contracts, exchange contracts, maintenance contracts, donation contracts, mortgage contracts, pledge/pawn contracts, leasing contracts, rental contracts) and other acts (guarantees requested by various institutions from their administrators);
întocmirea actelor constitutive ale societăților comerciale, asociațiilor și fundațiilor;	drawing up articles of association for companies, associations and foundations;
autentificarea documentelor;	authenticating documents;
legalizarea semnăturilor, a specimenelor de semnătură și a sigiliilor;	certifying signatures, signature specimens and seals;
orice alte operațiuni prevăzute de	any other services provided for by

lege. **Alte profesii legale** **Executori judecătorești** **Uniunea Națională a Executorilor Judecătorești din România** (UNEJ) reprezintă organizația profesională cu personalitate juridică, formată din toți executorii judecătorești. Uniunea acționează pentru asigurarea prestigiului și autorității profesiei de executor judecătoresc, având ca scop principal reprezentarea și apărarea intereselor profesionale ale membrilor săi. Executorii judecătorești sunt organizați în 15 camere, fiecare funcționând pe lângă curtea de apel corespunzătoare. **Grefieri** Organismul central responsabil pentru reglementarea profesiei de grefier este **Consiliul Superior al Magistraturii** (CSM). **Școala Națională de Grefieri** (SNG), este o instituție publica cu personalitate juridică, aflată în coordonarea Consiliului Superior al Magistraturii, responsabilă cu formarea inițială și continuă a grefierilor. În cadrul sistemului judiciar român activează diferite categorii de grefieri: grefieri de ședință;	the law. **Other legal professions** **Judicial enforcement officers** The **Romanian National Union of Judicial Enforcement Officers** (UNEJ) is a professional body with legal personality comprising all judicial enforcement officers. It is responsible for preserving the standing and authority of the profession of judicial enforcement officer. Its main mission is to represent and defend the professional interests of its members. Judicial enforcement officers are grouped in 15 chambers, each of which is attached to the relevant court of appeal. **Clerks of Court** The central body within the judicial system responsible for regulating the profession of clerk of court is the **Superior Council of Magistracy** (CSM). **The National School of Clerks** of Court (SNG) is a public body with legal personality under the coordination of the Superior Council of Magistracy, responsible for providing initial and continuing training for clerks of court. The Romanian judicial system has several categories of clerks of court: hearing clerks;

grefieri statisticieni; grefieri documentariști; grefieri informaticieni; grefieri arhivari; grefieri registratori. (available at: https://e-justice.europa.eu/content_legal_professions-29-ro-ro.do?init=true&member=1)	statistician clerks; research clerks; IT clerks; archiving clerks; registrar clerks. (available at: https://e-justice.europa.eu/content_legal_professions-29-ro-ro.do?init=true&member=1)

5.6. Translate into English:

În România, avocatul este persoana cu studii juridice superioare a cărei activitate constă în principal în asistarea sau reprezentarea persoanei fizice și persoanei juridice în raportul acestora cu autoritățile publice, cu instituțiile și cu orice persoană română sau străină.

Atât la nivel național, cât și internațional, în exercitarea dreptului la apărare, avocatul are dreptul și obligația să asigure prin toate mijloacele legale liberul acces la justiție, un proces echitabil soluționat într-un termen rezonabil.

Intrarea în profesie presupune două etape: dobândirea calității de avocat și înscrierea în barou în vederea exercitării efective a profesiei.

Contractul de asistență juridică, încheiat între avocat și clientul său, reprezintă acordul de voință expres exprimat și încheiat între forma de exercitare a profesiei de avocat și client, prin care avocatul acceptă mandatul acordat de clientul său în temeiul căruia se obligă să efectueze tot ceea ce este necesar și legal în vederea asigurării apărării drepturilor, libertăților și intereselor legitime ale persoanei fizice sau juridice contractante.

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5.7. Answer the following questions:

1. Are there any differences between a lawyer and an attorney-at-law?
2. Does a lawyer differ from a solicitor or a barrister?
3. What is a 'counsel'?
4. Which are the main branches of the legal profession in England and Wales?
5. What particular activities does the work of a barrister cover?
6. Which are the training stages for a barrister?
7. What is a QC?
8. What are the Inns of Court?
9. What particular activities does the work of a solicitor cover?
10. Which are the training stages for a solicitor?

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UNIT 6

THE COURT SYSTEM

Learning objectives:

In this unit, you will:

- discover the court system in the UK (civil courts and criminal courts, original jurisdiction courts and appellate jurisdiction courts, superior courts and inferior courts)
- become familiar with the main differences between the court system in England and Wales and the court system in Romania
- practise the relevant vocabulary by completing various exercises
- develop translation and communication skills

Reading

Classification of Courts

Since England and Wales are one jurisdiction, whereas Scotland and Northern Ireland each have their own legal systems, the United Kingdom does not have one single court system.

Courts can be classified at several levels:

- civil courts and criminal courts
- original jurisdiction courts and appellate jurisdiction courts

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- superior courts (e.g. the Supreme Court, the Employment Appeals Tribunal) and inferior courts

The courts of original jurisdiction (i.e. which hear trials of first instance) are: the magistrates' courts, county courts, the Crown Court and High Court.

The Crown Court and High Court have both an original and appellate jurisdiction.

In most cases, the Supreme Court sits above all of these as the final court of appeal.

Magistrates' Courts

Magistrates' courts are local, inferior courts. They primarily have a criminal jurisdiction, as well as a limited civil jurisdiction (family law matters, recovery of certain debts, the licensing of gambling institutions). They are also responsible for the enforcement of fines and community punishments.

A separate criminal jurisdiction in the magistrates' courts concerns adolescent crime, the court being known as the 'youth court'.

Where cases required a penalty greater than magistrates' sentencing powers, cases will be sent to the Crown Court.

County Courts

Also considered an inferior court, the county court deals with civil matters and its jurisdiction is set out in statute. It is often referred to as the small claims court.

Discover the main points of the jurisdiction of a county court by filling in the blank spaces with the given words and expressions:

adoption, injury, debt, disputes, breach, credit

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- Claims for ... repayment, including enforcing court orders and return of goods bought on...,
- Personal ... claims (injuries caused by negligence), for example, traffic accidents, accidents at work
- ...of contract concerning goods or property
- Family issues such as relationship breakdown or ...
- Housing..., including mortgage and council rent arrears and re-possession.

The Crown Court

The Crown Court is a superior court. It deals with more serious criminal cases such as murder, rape or robbery, some of which are on appeal or referred from magistrates' courts. Trials are heard by a Judge and a jury consisting of 12 members. Members of the public are selected for jury service or may have to go to court as witnesses. Crown Court cases originate from magistrates' courts.

As a court of appellate jurisdiction, the Crown Court hears appeals against decisions of magistrate's courts.

The High Court

The High Court deals with higher level civil disputes within three divisions

- the Queen's Bench Division
- the Chancery Division
- the Family Division

and deals with other jurisdictions including the Administrative Court.

The High Court has unlimited jurisdiction in civil matters, but it also has important appellate and reviewing jurisdiction in respect of criminal matters.

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The Court of Appeal

The Court of Appeal consists of two divisions: the Criminal Division and the Civil Division. It thus deals with civil appeals from the High Court and the county court, as well as appeals from certain tribunals such as the Employment Appeals Tribunal. Criminal appeals include appeals against convictions in the Crown Court, and points of law referred by the Attorney General following acquittal in the Crown Court or where the sentence imposed was unduly lenient.

The Supreme Court

The Constitutional Reform Act 2005 removed the judicial function of the House of Lords from Parliament, establishing a new, independent supreme court (from October 2009).

The Supreme Court of the United Kingdom assumes jurisdiction on points of law for all civil law cases in the UK and all criminal cases in England and Wales and Northern Ireland.

Before the creation of the Supreme Court, the highest court of appeal was the House of Lords, where the 12 most senior judges - the Lords of Appeal in Ordinary, or Law Lords - sat. It acted as the final court on points of law for the whole of the United Kingdom in civil cases and for England, Wales and Northern Ireland in criminal cases.

The creation of a new Supreme Court means that the most senior judges are now entirely separate from the Parliamentary process.

As an appeal court, the Supreme Court cannot consider a case unless a relevant order has been made in a lower court.

Discover the main points of the jurisdiction of the Supreme Court by filling in the blank spaces with the given words and expressions:

constitutional, final, common law, arguable, Northern Ireland, United Kingdom

- it is the ...court of appeal for all United Kingdom civil cases, and criminal cases from England, Wales and ...
- hears appeals on ... points of law of general public importance
- focuses on cases of the greatest public and... importance
- maintains and develops the role of the highest court in the ...as a leader in the ...world

Word study

jurisdiction s. = jurisdicţie, competenţă
civil court = instanţă competentă în materie civilă
criminal court = instanţă competentă în materie penală
original jurisdiction court = instanţă de fond
appellate jurisdiction court = instanţă de apel
magistrates' court = instanţă de fond, judecătorie
county court = instanţă locală/regională
Crown Court = Tribunalul Coroanei/Regal; Tribunalul Penal
High Court = Înalta Curte de Justiţie (din Anglia şi Ţara Galilor)
court of appeal = curte de apel
gambling = jocuri de noroc
fine s. = amendă
penalty s. = sancţiune, pedeapsă
to sentence v.t. = a da o sentinţă
sentence s. = sentinţă
arrears s. pl. = arierate, întârzieri, restanţe
re-possession s. = repunere în posesie
to refer v.t. = a trimite
jury s. = juriu

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Queen's Bench Division = secţie a Înaltei Curţi competentă în soluţionarea cauzelor referitoare la delicte civile, răspundere contractuală şi calomnie
Chancery Division = secţie a Înaltei Curţi competentă în soluţionarea cauzelor de dreptul afacerilor, drept, fiduciar
aquittal s. = achitare
unduly adv. = necuvenit, nepotrivit, ilegal, inadecvat
lenient adj. = îngăduitor, blând
Lords of Appeal in Ordinary/Law Lords = membri ai Camerei Lorzilor, judecători ai instanţei superioare ca ultimă instanţă de atac (înainte de înfiinţarea Curţii Supreme)

6.1. True or false?

1. Magistrates' courts have only criminal jurisdiction.
2. The lowest of courts is the magistrates' court.
3. In the Crown Court, trials are heard by a Judge and a 12 person jury.
4. The main work of the Crown Court is to deal with trials that take place on indictment, i.e. involving a trial.
5. The High Court deals primarily with lower level civil disputes.
6. The High Court has limited jurisdiction in civil matters.
7. The business of the High Court will be assigned into three divisions.
8. The judges of the Court of Appeal can sit in either division and in both divisions.
9. The rationale for the creation of the Supreme Court was the separation of powers in respect of the judiciary.
10. Before the Supreme Court was created, the decisions of the House of Lords bound all courts below.

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6.2. Match the following words and phrases with their definitions:

1. tribunals
2. coroners
3. puisne judges
4. circuit judge
5. The Family Division
6. The Queen's Bench Division
7. The Chancery Division
8. The Court of Justice of the European Union
9. The European Court of Human Rights

a) assigned to one of the six circuits, he sits at the various courts within the circuit;
b) they are specialist judicial bodies which decide disputes in a particular area of law; most their jurisdictions are part of a structure created by the Courts and Enforcement Act 2007;
c) based in Strasbourg, it deals with cases regarding the infringement of rights when there is no legal remedy within the national legal system;
d) although the post they hold is judicial, often requiring legal qualification and experience, they are not considered to be members of the courts judiciary; their role has evolved into an independent judicial officer, charged with the investigation of sudden, violent or unnatural death;
e) the formal name given to the ordinary judges of the High Court; in practice, they tend to be referred to as 'High Court judges';
f) it deals with complex defended divorce cases, wardship, adoption, domestic violence etc; it also deals with appeals from magistrates and county courts in matrimonial cases;
g) a case covered by European law may be referred to this court, based in Luxembourg; this may happen if a national

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government has not implemented European legislation properly, if there is confusion over its interpretation, or if it has been ignored;
h) it deals with trusts, contested wills, winding up companies, bankruptcy, mortgages, contested revenue (usually income tax) cases etc;
i) it deals with large and/or complex claims for compensation; it also deals with a limited number of appeals from magistrates courts or Crown Court etc.

6.3. Find out the main coordinates of a magistrate's profession by filling in the blank spaces with the following words and phrases:
formal, part-time, allowance, undertake, disorder, stipendiary, peace, panels, proceedings, lay, matters, advisory, decision-making

A magistrate is a justice of the ...sitting in a magistrates' court.

Magistrates are trained, unpaid members of their local community, who work ... and deal with less serious criminal cases, such as minor theft, criminal damage, public... and motoring offences. All magistrates sit in adult criminal courts as ... of three, having equal ... powers but only one member, the chairman, speaks in court and presides over ... A qualified legal adviser is available to the panel at all times.

Most magistrates are ... persons and have no ... legal qualifications. However, all magistrates must ... a compulsory programme of practical training which prepares them to sit in court. They are advised by a Clerk, who is a qualified lawyer.

They also decide many civil ..., particularly in relation to family work.

The Lord Chancellor appoints magistrates on the advice of local ... committees.

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Magistrates are unpaid but may claim expenses and an ... for loss of earnings. There are also ... magistrates in London and other major cities.

6.4. The following translations about the judicial system in Romania have been done by the European Commission service. Compare the versions in the two languages and draw a list of equivalences. Do you agree with the translation solutions?

e.g. *judecătorie* = district court
instanţă militară = military court
a avea rolul de = to function as
cauzele cu profesionişti = commercial cases
colegiu de conducere = leading committee
.....
.....
.....
.....
.....
.....
.....
.....

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Organizarea justiției - sistemul judiciar Principiile, structura și organizarea sistemului judiciar din România sunt prevăzute în **Constituția României** și în **Legea** nr. 304/2004 privind organizarea judiciară. Justiția se realizează prin următoarele instanțe judecătorești: Înalta Curte de Casație și Justiție; curțile de apel; tribunalele; tribunalele specializate; judecătoriile și instanțe militare. **Ierarhia instanțelor** **Înalta Curte de Casație și Justiție** are rolul de instanță **supremă** în România. Aceasta asigură interpretarea și aplicarea unitara a legii de către celelalte instanțe judecătorești. cele **15 curți de apel** au tribunale și tribunale specializate în circumscripție. cele **42 de tribunale** sunt organizate la nivel de județ și în București, fiind situate, de regulă, în orașele reședință de județ. **4 tribunale specializate** funcționează ca instanțe separate	**Organisation of justice - judicial system** The principles, structure and organisation of the Romanian judicial system are laid down in the **Romanian Constitution** and in **Law** No 304/2004 on judicial organisation. The following courts make up the judicial system: the High Court of Cassation and Justice; the courts of appeal; the tribunals; the specialised tribunals; the district courts and the military courts. **Hierarchy of courts** The **High Court of Cassation and Justice** functions as the **Supreme Court** in Romania. It ensures that the law is interpreted and applied uniformly by the other courts of law. The **15 courts of appeal** have tribunals and specialised tribunals under their jurisdiction. The **42 tribunals** are organised at county level and in Bucharest, and are located as a rule in the principal town of each county. The **4 specialised tribunals** function as separate courts for cases involving minors and

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pentru: cauzele cu minori și de dreptul familiei (1) și pentru cauzele cu profesioniști (3).
tribunalele au în circumscripție **176** de **judecătorii**.

Tipuri de instanțe - scurtă descriere
Mai multe judecătorii își desfășoară activitatea în circumscripția fiecăruia din cele 42 de tribunale.
Toate cele **176 de judecătorii** funcționale sunt organizate la nivel de județ și în sectoarele municipiului București.
Fiecare instanță este condusă de un președinte care exercită atribuții manageriale Secțiile specializate ale instanței sunt conduse de un președinte de secție. În fiecare instanță judecătorească un colegiu de conducere hotărăște cu privire la problemele generale de conducere ale instanței.
Instanțele militare sunt organizate în 4 tribunale militare, Tribunalul Militar Teritorial București și Curtea Militară de Apel București. Fiecare tribunal militar are statutul de unitate militară.

Consiliul Superior al Magistraturii reprezintă, conform Constituției, garantul independenței justiției și asigură

family law (1) and for commercial cases (3).

The tribunals have **176 district courts** under their jurisdiction.
Types of courts – short description
Several courts carry on their judicial activity under the jurisdiction of each of the 42 tribunals.
All **176 functioning courts** are organised at county level and in the districts of Bucharest.
Each court is headed by a president with managerial capacity. The court's specialised sections are led by a section president. In each court, a leading committee decides upon general, court-governance issues.

The **military courts** are organised in 4 military tribunals, the Territorial Military Tribunal in Bucharest and the Military Court of Appeal in Bucharest. Each of the military tribunals has the status of a military unit.
The **Superior Council of Magistracy** is the body that, under the Constitution, ensures the independence of

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respectarea legii și a criteriilor de competență și etica profesională în desfășurarea carierei profesionale a judecătorilor și procurorilor. **Ministerul Justiției** contribuie la buna funcționare a sistemului judiciar și la asigurarea condițiilor înfăptuirii justiției ca serviciu public, apărarea ordinii de drept și a drepturilor și libertăților cetățenești. (available at: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-ro-ro.do?init=true&member=1)	the judiciary. Furthermore, it ensures observance of the law and of the criteria of competence and professional ethics in the exercise of the professions of judges and prosecutors. The **Ministry of Justice** contributes to the proper functioning of the judicial system, ensures that justice takes its course under proper conditions as a public service and defends the legal order and citizens' rights and freedoms. (available at: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-ro-en.do?init=true&member=1)

Reading

Civil Procedure and Criminal Procedure

a. How civil law is enforced in England and Wales

A person who believes that another individual or organisation has committed a civil wrong can complete a claim form and send it to the appropriate court. The County Court, which is based at over 200 locations, deals with lower-value cases , whereas the High Court, which is in London, hears most higher-value cases. In the County and High Courts, each case is heard by a single judge.

The person who starts a civil case is called a claimant, and he or she has the burden of proving that the other party (the defendant) committed a civil wrong. If the claimant is successful, the usual remedy is damages: a sum of money paid as compensation by the defendant to the claimant. Other remedies include court orders prohibiting a person from behaving in a certain way.

Either party to a civil case may appeal to a higher court against the decision.

It is important to note that the courts are strongly supporting alternatives to litigation, in particular alternative dispute resolution (ADR) initiatives.

b. How criminal law is enforced in England and Wales

A person who believes that a crime has been committed contacts the police, who conduct an investigation. If, after arresting and interviewing a person, the police believe that he or she committed the crime, that individual is charged. A report of the case is then sent to the Crown Prosecution Service (CPS).

If the CPS believes that the case has a reasonable prospect of success, and that it would be in the public interest to do so, it will start criminal proceedings against the suspect, who becomes the defendant in the case. In court, the CPS bears the burden of proving, beyond reasonable doubt, that the defendant committed the crime.

Minor offences, such as speeding, are heard by Magistrates' Courts. Many towns in England and Wales have their own Magistrates' Court, where cases are heard by three magistrates. They do not give reasons for their decisions.

The Crown Court, based in about 90 centres throughout England and Wales, hears very serious offences, such as

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murder and rape. A jury consisting of 12 people chosen at random from the local population will decide, without stating any reason, whether the defendant is guilty of the offence or not. Juries are initially told to reach a unanimous verdict, but the judge may allow them to bring back a majority verdict and decide that an 11:1 or 10:2 majority is sufficient. Juries are advised about the law by the judge, who also imposes a sentence if the defendant is found guilty.

Some intermediate offences, such as theft, may be tried in a Magistrates' Court or the Crown Court.

The sentences available for criminal offences include fines (payment of a sum of money to the state), imprisonment and community punishments such as unpaid supervised work.

Word study

procedure s. = procedură
civil wrong = delict civil, faptă ilicită, prejudiciu
claim form = cerere de chemare în judecată
claimant s. = reclamant
defendant s. = pârât
burden of proof = sarcina probei
damages = daune, despăgubiri
alternative dispute resolution (ADR) = metodă alternativă de soluţionare a litigiilor (de exemplu, medierea)
to charge with = a acuza de (în mod formal, oficial)
to start criminal proceedings = a începe urmărirea penală
speeding s. = exces de viteză, depăşirea vitezei legale
murder s. = omor, omucidere, crimă
rape s. = viol

Note the various translations of "a intenta un process":
to take legal action
to file a lawsuit
to sue

to bring an action (against)
to go to law
to go to court
to undertake/ to institute (legal) proceedings
to institute an action at law

Other expressions:
defence = întâmpinare
counter-claim = cerere reconvenţională
to challenge a decision = a ataca o hotărâre

6.5. Translate into English:

O funcție importantă a justiției o constituie posibilitatea controlului constituționalității legilor.

Magistratul, și în special judecătorul, are un rol esențial în statul de drept, el impunându-și puterea de control nu numai față de subiecții de drept, ci și față de celelalte puteri.

Magistratura este activitatea desfășurată de judecători în scopul înfăptuirii justiției și de procurori în scopul apărării intereselor generale ale societății, a ordinii de drept și a drepturilor și libertăților cetățenilor.

Judecătorul este persoana cu studii juridice superioare care, în condiţiile prevăzute de lege, este învestită în funcţie de către stat prin reprezentanţii săi constituţionali, având drepturi şi obligaţii specifice ce derivă direct din Constituție și din lege, și care are dreptul și responsabilitatea aplicării legii în cadrul sistemului instanțelor judecătorești.

Procurorul este persoana cu studii juridice superioare, învestită în funcție în condițiile specifice prevăzute de lege, de către stat, prin reprezentanții săi legali, independentă, imparțială și stabilă, care are dreptul și responsabilitatea de a asigura și supraveghea aplicarea legii în cadrul organizat al parchetelor de pe lângă instanțele judecătorești.

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În sistemul românesc, judecătoriile judecă în primă instanţă toate procesele şi cererile, în afară de cele date prin lege în competenţa altor instanţe.

Ca instanţe de apel, tribunalele judecă apelurile declarate împotriva hotărârilor pronunţate de judecătorii în primă instanţă.

În primă instanţă, tribunalele judecă şi cererile pentru repararea prejudiciilor cauzate prin erori judiciare săvârşite în procesele penale.

6.6. Answer the following questions:

1. How can courts be classified?
2. Which are the courts of original jurisdiction?
3. Give examples of civil courts.
4. Give examples of criminal courts.
5. Describe the jurisdiction of the Supreme Court.
6. What are magistrates?
7. Make a brief presentation of civil procedure in England and Wales (5-6 lines). Is it the same in our legal system?
8. Make a brief presentation of criminal procedure in England and Wales (5-6 lines).

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UNIT 7

EUROPEAN UNION LAW

Learning objectives:

By the end of this unit, you will:

- identify and be able to explain the key terms related to the evolution of the European Union (the birth of the EU, main treaties, sources of EU law, EU institutions etc.)
- discover the Romanian equivalents of these terms
- practise the relevant vocabulary by completing various exercises
- develop translation and communication skills

Reading

The European Union – the Beginnings

The beginnings of the European Union can be traced back in the 1950s. The first treaty underpinning the process of European integration was the Treaty of Paris, concluded in 1951 and effective from 1952, which established the European Coal and Steel Community (ECSC). The original member states were: France, West Germany, Italy, Belgium, Luxembourg and the Netherlands.

Two other Communities were established by the Treaties of Rome (1958): the European Economic Community aiming at economic development through the setting up of a

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common market and the approximation of the economic policies of member states, and the European Atomic Energy Community (Euratom), devoted to sectoral matters and creating the technical and industrial conditions necessary to establish the nuclear industries and direct them to peaceful use in order to lay the basis of a single energy market.

The Single European Act (1986) was the first major amendment to the founding Treaties pursuing the establishment of the single European market. It represented the most important revision of the treaties since their adoption, bringing about changes and reforms to the Community by adjusting its institutional structure and expanding its competence.

Later, the Treaty of Maastricht created the European Union with broad economic, political and social objectives. After various revisions, the Treaty on European Union (TEU) was eventually agreed and signed by the States in Maastricht in February 1992. According to the terms of this Treaty, the EU came into being on 1 November, 1993.

Article B of the TEU stipulates that the Union will set itself a series of objectives.

Fill in the blank spaces with the given words in order to discover these objectives:
implementation, affairs, acquis communautaire, effectiveness, establishment, sustainable, policy, frontiers, nationals

- To promote balanced and ... economic and social progress, in particular through the creation of an area without internal ..., through the strengthening of economic and social cohesion and through the ... of economic and monetary union.
- To assert its identity on the international scene through the ... of a common foreign and security... including the

eventual forming of a common defence policy which might in time lead to a common defence.

- To strengthen and protect the rights and interests of its member states' ... through the introduction of a citizenship of the Union.
- To develop close cooperation on justice and home...
- To maintain in full the ... and build on it with a view to considering to what extent the policies and forms of cooperation introduced by the Treaty may need to be revised so as to ensure the ... of the mechanisms and the institutions of the Community.

Other treaties were the Treaty of Amsterdam (1999), aiming to reform the EU institutions in preparation for the arrival of future member countries, and the Treaty of Nice (2003), meant to reform the institutions so that the EU could function effectively after reaching 25 member countries.

Nowadays, the EU is an economic and political partnership between 28 European countries.

The first steps were to foster economic cooperation, based on the idea that countries trading with one another become economically interdependent and a conflict is less likely to occur under such circumstances.

In time, EU has developed into a huge single market with the euro as its common currency, as well as into an organisation spanning all policy areas, from development aid to environment.

The peoples of Europe have enjoyed half a century of peace, stability, and prosperity, better and better living standards, and a single European currency.

The free movement of people throughout most of the continent is due to the abolition of border controls between EU countries.

One key concept characterizing the objectives and activity of the European Union is the rule of law. This means that everything that it does is founded on treaties, voluntarily and democratically agreed by all member countries. These binding agreements set out the EU's goals in its many areas of activity.

Other values promoted by the EU are: respect for human rights and freedoms, human dignity, democracy, equality.

Since the 2009 signing of the Treaty of Lisbon, the EU's Charter of Fundamental Rights brings all these rights together in a single document. The EU's institutions are legally bound to uphold them, as are EU governments whenever they apply EU law.

The single market is the EU's main economic engine, enabling most goods, services, money and people to move freely.

In its evolution, the EU remains focused on making its governing institutions more transparent and democratic and on addressing global problems, such as climate change, with one voice. More powers are being given to the directly elected European Parliament, while national parliaments are being given a greater role, working alongside the European institutions.

European citizens have an ever-increasing number of channels for taking part in the political process.

Word study

treaty s. = tratat
to underpin v.t. = a sprijini
to conclude v.t. = a încheia
effective adj. = în vigoare
European Coal and Steel Community = Comunitatea Europeană a Cărbunelui şi Oţelului

to establish v.t. = a înfiinţa
policy s. = politică
member state/member country = stat membru
Single European Act = Actul Unic European
to pursue v.t. = a urmări
sustainable = durabil
to foster v.t. = a favoriza
currency s. = monedă
free movement of people = libera circulaţie a persoanelor
abolition s. = desfiinţare
to uphold v.t. = a susţine

7.1. True or false?

1. The EU is a partnership between 27 European countries.
2. The first treaty underpinning the process of European integration was the Treaty of Rome.
3. It was created in the aftermath of the Second World War.
4. The first steps were to foster economic cooperation.
5. The EU has developed into a huge single market with the euro as its common currency.
6. People cannot travel freely throughout most of the continent.
7. The agreements between Member States set out the EU's objectives in its many areas of activity.
8. The Treaty of Maastricht created the European Union with broad economic, political and social objectives.
9. One of the aims of the EU is making its governing institutions less transparent and more democratic.
10. The rights and interests of the nationals of the Member States have been protected through the introduction of a citizenship of the Union.

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7.2. Complete the blank spaces using information from the text whenever possible:

1. The European Union … in the 1950s …
2. The first treaty …came into force …
3. … Communities …sectoral matters.
4. The Single European Act ... amendment to the founding Treaties ...
5. Later, the Treaty of Maastricht ... the European Union ... objectives. After ... agreed and signed ...
6. Among the values... human dignity, democracy. ... the rule of law.
7. The European Parliament ... national parliaments ...
8. European citizens ...political process.

7.3. Discover the sources of European Union law while filling in the blank spaces with the following words and phrases:

supplementary, case law, primary, principles, outside, ground, interinstitutional, competences, legislation, secondary, recommendations

The main distinction at the EU law level is between 'primary' and 'secondary' ….

The treaties (… legislation) are the basis or … rules for all EU action. They set out the distribution of … between the Union and the Member States and establish the powers of the European institutions.

… legislation comprises unilateral acts and agreements. Unilateral acts include regulations, directives, decisions, opinions and …. Agreements group together international agreements, signed by the EU and a country or … organization, agreements between Member States, and … agreements, i.e. agreements between the EU institutions.

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There is a third source of EU law, called ...law: the ... of the Court of Justice, international law and the general ... of law.

Reading

The Institutions

According to art. 13 under Title III (TEU),

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation (...).

We will only deal with: the Commission, the Council, the European Parliament and the Court of Justice.

1. The European Commission is one of the main institutions of the European Union. It represents and upholds the interests of the EU as a whole. It drafts proposals for new European laws. It manages the day-to-day business of implementing EU policies and spending EU funds.

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Based in Brussels and Luxembourg, it has offices (representations) in every EU country and delegations in capital cities around the world.

It consists of 28 Commissioners, corresponding to each EU country. Each Commissioner is assigned responsibility for specific policy areas by the President.

The day-to-day running of the Commission is taken care of by the Commission's staff – administrators, lawyers, economists, translators, interpreters, secretarial staff, etc. organised in departments known as Directorates-General (DGs).

Purpose

The Commission represents and upholds the interests of the EU. It thus oversees and implements EU policies by:

- proposing new laws to Parliament and the Council
- managing the EU's budget and allocating funding
- enforcing EU law (together with the Court of Justice)
- representing the EU internationally, for example, by negotiating agreements between the EU and other countries.

Proposing new laws

The Commission has the 'right of initiative' – it can propose new laws to protect the interests of the EU and its citizens. It does this only on issues that cannot be dealt with effectively at national, regional or local level (subsidiarity principle).

When the Commission proposes a law, it tries to satisfy the widest possible range of interests. This stage is preceded by a consultation stage.

The Commission's departments produce a draft of the proposed new law. If at least 14 of the 27 Commissioners agree with it, the draft is then sent to the Council and Parliament. After debating and amending the draft, they decide whether to adopt it as a law.

Managing the EU's budget and allocating funding

With the Council and Parliament, the Commission sets broad long-term spending priorities for the EU in the EU 'financial framework'. It also draws up an annual budget for approval by Parliament and the Council, and supervises how EU funds are spent. The Commission's management of the budget is scrutinised by the Court of Auditors.

The Commission manages funding for EU policies (e.g. agriculture and rural development) and programmes such as 'Erasmus' (student exchanges).

Enforcing European law

As 'guardian of the Treaties', the Commission checks that each member country is applying EU law properly.

If a national government seems to fail to apply EU law, the Commission first sends an official letter asking it to correct the problem. As a last resort, the Commission refers the issue to the Court of Justice. The Court can impose penalties, and its decisions are binding on EU countries and institutions.

Representing the EU internationally

The Commission is the representative of all EU countries in international bodies like the World Trade Organisation. It also negotiates international agreements for the EU.

2. **The Council is responsible for decision-making and co-ordination**

The Council consists of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.

- The Council of the European Union passes laws, usually legislating jointly with the European Parliament.

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- The Council co-ordinates the broad economic policies of the member states.
- The Council defines and implements the EU's common foreign and security policy, based on guidelines set by the European Council.
- The Council concludes, on behalf of the Community and the Union, international agreements between the EU and one or more states or international organisations.
- The Council co-ordinates the actions of Member States and adopts measures in the area of police and judicial co-operation in criminal matters.
- The Council and the European Parliament constitute the budgetary authority that adopts the Community's budget.

The Council of the European Union vs. The European Council

The European Council

- Its role is to set the EU's **general political direction and priorities**, and deal with complex or specific issues that cannot be resolved at a lower level of intergovernmental cooperation.
- Despite its influence in setting the EU political agenda, it has **no powers to pass laws.**
- The European Council brings together the heads of state or government of every EU country, the Commission President and the European Council President, who chairs the meetings. The EU's High Representative for Foreign Affairs and Security Policy also takes part.

3. The European Parliament

Fill in the blank spaces with the given words in order to find out the basic information about the European Parliament:
co-legislator, joint, directly-elected, Charter, budget, voters, human rights

The European Parliament is the only ... EU body and one of the largest democratic assemblies in the world. Its 754 Members are there to represent the EU's 500 million citizens. They are elected once every five years by ... from across the 28 Member States.

The European Parliament has been steadily gaining power over recent decades and now acts as a ... for nearly all EU law. Together with the Council, the Parliament adopts or amends proposals from the Commission. Parliament also supervises the work of the Commission and adopts the European Union's...

Parliament also works closely with national parliaments of EU countries. Regular ... parliamentary assemblies allow for a better inclusion of national perspectives into the Parliament's deliberations.

The European Parliament is a defender of ... and democracy in Europe and abroad. The .... of Fundamental Rights in the European Union sets out the civil, political, economic and social rights of all individuals living on EU territory.

4. Court of Justice of the European Union

The Court of Justice of the European Union includes the Court of Justice, the General Court and specialised courts

The role of the Court of Justice is to interpret EU law and to make sure it is applied in the same way in all EU countries. It also settles legal disputes between EU governments and EU institutions. Individuals, companies or organisations can also bring cases before the Court if they feel their rights have been infringed by an EU institution.

Composition

The Court of Justice has one judge per EU country.

The Court is helped by eight 'advocates-general' whose job is to present opinions on the cases brought before the Court. They must do so publicly and impartially.

Each judge and advocate-general is appointed for a term of six years, which can be renewed.

A 'General Court' deals with cases brought forward by private individuals, companies and some organisations, and cases relating to competition law.

The 'EU Civil Service Tribunal' rules on disputes between the European Union and its staff.

Types of cases

The Court gives rulings on the cases brought before it. The five most common types of cases are:

1. requests for a preliminary ruling– when national courts ask the Court of Justice to interpret a point of EU law
2. actions for failure to fulfil an obligation – brought against EU governments for not applying EU law
3. actions for annulment – against EU laws thought to violate the EU treaties or fundamental rights
4. actions for failure to act – against EU institutions for failing to make decisions required of them
5. direct actions – brought by individuals, companies or organisations against EU decisions or actions

A judge and an advocate general are assigned to each case that comes before the Court.

Cases submitted to the court are processed in two stages: a written stage and an oral stage.

The written stage means that all the parties involved hand in a written statement to the judge responsible for the case. The judge then writes a summary of these statements and the case's legal background.

The second stage is the public hearing. Depending on the complexity of the case is, this can take place before a panel of 3, 5 or 13 judges or in front of the whole Court. At the hearing, lawyers from both sides put their case to the judges and the advocate-general, who can question them.

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After the advocate-general gives his or her opinion, the judges discuss the case together and give their judgement.

Advocates-general are only required to give their opinion on the case if the Court believes that the particular case raises a new point of law, but their opinion is not necessarily followed by the Court.

The Court's judgements are majority decisions, read out at public hearings.

Word study

institutional framework = cadru instituţional
hereinafter = în continuare
Court of Auditors = Curtea de Conturi
Commissioner = Comisar
running = conducere
directorate s. = direcţie
subsidiarity principle = principiul subsidiarităţii
draft s. = proiect
binding adj. = obligatoriu
to pass a law = a adopta o lege
guideline s. = indicaţie
to infringe v.t. = a încălca
General Court = Tribunalul
Civil Service Tribunal = Tribunalul Funcţiei Publice
to give a ruling on = a pronunţa o hotărâre
request for a preliminary ruling = cerere pentru pronunţarea unei hotărâri preliminare
action for failure to fulfil an obligation = acţiune în constatarea neîndeplinirii unei obligaţii
action for annulment = acţiune în anulare
action for failure to act = acţiune în constatarea abţinerii de a acţiona
direct action = acţiune directă
hearing s. = audiere, şedinţă de judecată, înfăţişare

7.4. Translate and explain the following terms and phrases:

- Commissioner
- Right of initiative
- Subsidiary principle
- To amend a draft
- To apply EU law properly
- To impose penalties
- Binding decisions
- To settle legal disputes
- To bring an action before the court
- To infringe a right
- To give a ruling on
- Preliminary ruling
- Failure to fulfil an obligation
- Action for annulment
- Public hearing

What other terms are, in your opinion, related to the activity of the EU institutions?

7.5. Using the information from the text above, complete the following sentences:

1. Based in Brussels and Luxembourg, …
2. It oversees and … EU policies by …
3. If a national government fails to apply EU law, ...
4. … passes laws, usually legislating jointly with the European Parliament.
5. ... to set the EU's political agenda.
6. ... the only ... and one of the largest democratic assemblies ...

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7. ... interprets EU law to make sure it is applied in the same way in all EU countries.
8. The most common cases submitted to the court ...
9. The written stage...
10. The oral stage ...

7.6. Distinguish between the Council of the European Union and the European Council.

The Council of the European Union	The European Council
- it passes law - ... - ... - ...	- it has no powers to pass laws - ... - ... - ...

7.7. Choose the correct answer(s) and underline it (them):

1. The Commission shall:
a) execute the budget and manage programmes;
b) ensure the Union's external representation, including the implementation of the EU's common foreign and security policy;
c) exercise coordinating, executive and management functions, as laid down in the Treaties.

2. The Council shall:
a) exercise legislative and budgetary functions jointly with the European Parliament;
b) consist of a representative of each Member State at ministerial level;

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c) provide the Union with the necessary impetus for its development and define the general political directions and priorities thereof.

3. The Court of Justice of the European Union shall include:
a) the Court of Justice, the General Court;
b) the Court of Justice, the General Court and specialised courts;
c) the Court of Justice, the General Court and ordinary courts.

4. The Court of Justice of the European Union:
a) rules on actions brought by a Member State, an institution or a natural or legal person;
b) gives preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
c) gives preliminary rulings, even if national courts or tribunals of the Member State do not require such a ruling on points of EU law.

7.8. The European Court of Human Rights

The European Court of Human Rights, based in Strasbourg, deals with cases in which a person thinks their human rights have been contravened and for which there is no legal remedy within the national legal system.

Read the following paragraph about a case the ECtHR was confronted with. Then write a short essay (10-15 lines) about how important the right to vote is to you.

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Fundamental rights

In *Matthews* v. *United Kingdom* (Appl. 24833/94, 18 February 1999, [1999] 28 ECHR 361) the Court of Human Rights was faced for the first time with an act taking effect within the EU legal framework which was not reviewable before the Court of Justice. Matthews, a citizen of Gibraltar, which is a dependent territory of the UK, complained that she was not permitted to register as a voter for the European Parliament elections of 1994. This, she alleged, was a breach of Article 3 of Protocol No. 1 ECHR. The relevant UK legislation on direct elections did not include Gibraltar within the franchise for these purposes. Yet, Gibraltar's situation with regard to the EU is anomalous. It is not part of the customs territory and is treated as a third country for the purposes of the common commercial policy. On the other hand, many EU legislative acts in the areas such as the free movement of persons, services and capital and the protection of the environment and consumers do apply to Gibraltar and become part of the legal order of Gibraltar in the normal way.

The Court of Human Rights found that the UK was in principle responsible for any violation, that Article 3 could be applied to the European Parliament even though it was not envisaged when the ECHR was originally drafted, and that the European Parliament should now be viewed as a 'legislature' which was an essential precondition for applying Article 3. I tconcluded that the UK could not invoke its 'margin of appreciation' in deciding that in order to apply its European Parliamentary electoral system it had to exclude Gibraltar, because its population was too small to be a full European parliament constituency (at the time there was single constituency, first past the post voting). The case *Matthews* was not about the type of electoral system – which the Court of Human Rights leaves to the state to determine – but about the very essence of the right to vote.

7.9. Translate into English:

a) (1) Parlamentul European exercită, împreună cu Consiliul, funcțiile legislativă și bugetară. Acesta exercită funcții de control politic și consultative, în conformitate cu condițiile prevăzute în tratate.
Parlamentul European alege președintele Comisiei.
(2) Parlamentul European este compus din reprezentanții cetățenilor Uniunii. Numărul acestora nu poate depăși șapte sute cincizeci, plus președintele. Reprezentarea cetățenilor este asigurată în mod proporțional descrescător, cu un prag minim de șase membri pentru fiecare stat membru. (...)
(3) Membrii Parlamentului European sunt aleși prin vot universal direct, liber și secret, pentru un mandat de cinci ani.

b) Consiliul European definește orientările și prioritățile politice ale Uniunii. În cadrul acestuia, se reunesc de cel puțin patru ori pe an conducătorii politici europeni de cel mai înalt nivel, mai precis șefii de stat sau de guvern ai statelor membre, președintele Consiliului European, precum și președintele Comisiei Europene. Consiliul European identifică subiectele generale pe care Consiliul, adică reuniunea miniștrilor, le va aborda în cadrul fiecăruia dintre domeniile politice aflate în responsabilitatea sa. Prin urmare, dezbaterile și deciziile Consiliului European joacă un rol esențial în funcționarea Uniunii.

c) Consiliul adoptă decizii care au consecințe directe asupra vieții cetățenilor, dar și un impact considerabil pe plan internațional. În cadrul Consiliului se reunesc miniștrii fiecărui stat membru. Componența Consiliului și frecvența sesiunilor acestuia variază în funcție de subiectele abordate. Consiliul adoptă acte legislative (regulamente, directive etc.), cel mai adesea împreună cu Parlamentul European. În majoritatea

cazurilor, Consiliul legiferează în temeiul propunerilor care îi sunt transmise de Comisia Europeană.

d) Curtea de Justiţie a Uniunii Europene este compusă din trei instanţe: Curtea de Justiţie, Tribunalul şi Tribunalul Funcţiei Publice, a căror principală misiune este examinarea legalităţii actelor Uniunii şi asigurarea interpretării şi aplicării uniforme a dreptului acesteia.
Curtea de Justiţie colaborează cu instanţele judecătoreşti din statele membre, care sunt instanţele de drept comun în materia dreptului Uniunii. Pentru a asigura o aplicare efectivă şi omogenă a legislaţiei Uniunii şi pentru a evita orice interpretare divergentă, instanţele naţionale pot şi uneori trebuie să se adreseze Curţii de Justiţie solicitându-i să clarifice un aspect privind interpretarea dreptului Uniunii, în scopul de a le permite, de exemplu, să verifice conformitatea legislaţiei naţionale cu dreptul Uniunii.
Răspunsul Curţii de Justiţie nu ia forma unui simplu aviz, ci a unei hotărâri sau a unei ordonanţe motivate. Instanţa naţională destinatară este ţinută de interpretarea dată atunci când soluţionează litigiul aflat pe rolul său.
Indiferent de natura cauzei, procedura include o fază scrisă şi, dacă este cazul, o fază orală, publică. Trebuie să se facă distincţia între procedura trimiterii preliminare şi celelalte acţiuni, denumite acţiuni directe.
În trimiterile preliminare, instanţa naţională adresează Curţii de Justiţie întrebări privind interpretarea sau validitatea unei dispoziţii de dreptul Uniunii, în general sub forma unei decizii jurisdicţionale, în conformitate cu normele naţionale de procedură. După traducerea cererii în toate limbile Uniunii de Serviciul de traduceri al Curţii, grefa o comunică părţilor din acţiunea principală, precum şi tuturor statelor membre şi instituţiilor Uniunii.

În acţiunile directe, curtea trebuie sesizată printr-o cerere introductivă adresată grefei. Grefierul asigură publicarea în Jurnalul Oficial al Uniunii Europene a unei comunicări privind acţiunea, care indică motivele şi concluziile reclamantului. Cererea introductivă este comunicată părţii adverse, care are la dispoziţie o lună pentru a depune un memoriu în apărare. Reclamantul poate depune o replică, pârâtul o duplică, termenul fiind, de fiecare dată, de o lună. Termenele de prezentare a acestor documente trebuie respectate, cu excepţia situaţiei în care preşedintele acordă o prelungire a acestora.
În ambele tipuri de acţiuni, preşedintele şi primul avocat general desemnează un judecător raportor şi, respectiv, un avocat general, însărcinaţi să urmărească desfăşurarea cauzei.

e) Într-o hotărâre - Hotărârea Curţii (Camera a doua) din 15 octombrie 2009 în cauza C-263/08 - Curtea de Justiţie răspunde la întrebarea dacă "publicul interesat *poate exercita o cale de atac* împotriva deciziei prin care o instanţă, care aparţine unei organizări judiciare a unui stat membru, s-a pronunţat asupra unei cereri de autorizare a unui proiect, în condiţiile în care publicul interesat a avut ocazia să participe la soluţionarea de către instanţă a respectivei cereri şi să îşi exprime punctul de vedere cu această ocazie." (pct.32) Răspunsul este: „pe de o parte, beneficiul dreptului la o cale de atac, în sensul articolului 10a din Directiva 85/337 este independent de natura administrativă sau jurisdicţională a autorităţii care a adoptat decizia sau actul contestat, pe de altă parte, participarea la procedurile de adoptare a deciziilor privind mediul în condiţiile prevăzute la articolul 2 alineatul (2) şi la articolul 6 alineatul (4) din Directiva 85/337 este distinctă şi are o altă finalitate decât calea de atac, aceasta din urmă putând fi formulată împotriva deciziei adoptate la sfârşitul acestor proceduri; prin urmare, această participare nu are efect asupra condiţiilor de exercitare a căii de atac".

f) Comunitatea și-a stabilit ca obiectiv să mențină și să dezvolte un spațiu de libertate, securitate și justiție, în cadrul căruia este garantată libera circulație a persoanelor. Pentru realizarea treptată a unui astfel de spațiu, Comunitatea trebuie să adopte, între altele, măsurile în domeniul cooperării judiciare în materie civilă care sunt necesare pentru buna funcționare a pieței interne. Anumite disparități între normele interne care reglementează competența judiciară și recunoașterea hotărârilor împiedică buna funcționare a pieței interne. Adoptarea de dispoziții care să unifice normele referitoare la conflictele de competență în materie civilă și comercială și la simplificarea formalităților în vederea recunoașterii și executării rapide și simple a hotărârilor de către statele membre legate prin prezentul regulament este indispensabilă.

g) Diferite proceduri europene (cum ar fi Somația europeană de plată, Procedura europeană privind cererile cu valoare redusă și Titlul executoriu european) pot fi utilizate în cauzele civile transfrontaliere, însă, pentru toate acestea, hotărârea judecătorească trebuie executată în conformitate cu normele și procedurile naționale din statul în care are loc executarea (de obicei locul unde se găsește debitorul sau activele sale). În practică, trebuie să dispuneți de un act executoriu (o hotărâre judecătorească sau un act cu putere juridică) dacă doriți să solicitați executarea acestuia. Procedurile de executare și autoritățile care le efectuează (instanțe, agenții de recuperare a creanțelor și executori judecătorești) sunt stabilite de legislația națională a statului membru în care se dorește executarea.

7.10. Answer the following questions:

1. How did the European Union start out?
2. Which was the role of the Treaty of Maastricht?
3. Name other EU treaties.

4. Can you state some of the EU objectives?
5. What values does the EU promote?
6. Sources of EU law.
7. Which are the EU institutions?
8. Which are the main purposes of the Commission?
9. Distinguish between the Council of the European Union and the European Council.
10. Which is the main characteristic of the European Parliament?
11. The Court of Justice – composition.
12. Which are the five most common types of cases the Court of Justice gives rulings on?

Supplementary reading

Article 17 (Title III, TEU)

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

3. The Commission's term of office shall be five years.

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

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In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.

5. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 244 of the Treaty on the Functioning of the European Union.

Article 19

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out

in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

(c) rule in other cases provided for in the Treaties.

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UNIT 8

CRIMES

Learning objectives:

In this unit, you will:

- acquire notions coming under criminal law in the UK in particular (definition of a crime, classification of offences/crimes, punishments, crimes against the person, crimes against property etc.)
- understand the main types of offences and their implications, with a view to drawing a parallel with the offences in the Romanian Criminal Code
- develop the relevant specialist vocabulary by completing various exercises
- improve translation skills

Reading

Classification of Crimes

A crime, also termed *criminal* wrong, is a social harm that the law makes punishable. A second meaning involves the breach of a legal duty treated as the subject-matter of a criminal proceeding.

The modern tendency is to refer to crimes as *offences*.

Other definitions of a crime:

"An act (or sometimes a failure to act) that is deemed by statute or by the common law to be a public wrong and is

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therefore punishable by the state in criminal proceedings" (*Oxford Dictionary of Law*)

"A wrong that the government has determined is injurious to the public and that may therefore be prosecuted in a criminal proceeding" (*Dictionary of Legal Terms*)

According to seriousness, crimes (US) are **classified** into:

a) **felonies**

A **felony** is an offence punishable by death or imprisonment in excess of one year. Felonies are usually more serious crimes.

b) **misdemeanors**

A **misdemeanor** is a less serious offence, punishable with incarceration for one year or less.

c) **treason**

Treason is a third class of crime. It is the offence whereby a US citizen attempts by overt acts to overthrow or seriously injure the parent nation.

In the UK, the distinction between felonies and midemeanours persisted until 1967. At present, according to the type of trial, offences are commonly divided into:

a) **indictable offences**

An **indictable offence** is a more serious offence that may be tried on indictment, i.e. by jury in the Crown Court. The word "indictment" refers to the formal document that lists the charges for which the person is to be tried.

A person guilty of such an offence is liable to imprisonment for a term not exceeding 10 years.

b) **summary offences**

A **summary offence** is an offence that can be tried summarily, i.e. before magistrates. It is a minor offence.

The document containing the charges is called the 'information'.

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c) **offences which are triable "either way"**

An **either-way offence** is a crime that may be tried as an indictable offence or a summary offence. Thus, the accused may choose to have the case tried by the magistrates or before a judge and jury.

Another classification of crimes (UK) involves three main categories:

a) offences **against the public interest**: treason, sedition, offences against the Official Secrets Acts, conspiracy, riot, violent disorder, affray, fear or provocation of violence, harassment, and perjury;

b) offences **against the person**: homicide, assault and battery, rape, bigamy, etc.;

c) offences **against property**: theft, robbery, burglary, obtaining by deception, blackmail, handling stolen goods, criminal damage.

Word study

crime s. = crimă, infracţiune
wrong s. = vătămare, prejudiciu, faptă ilicită, delict
harm s. = prejudiciu, vătămare
punishable adj. = care este pedepsit
breach s. = încălcare
offence (UK)/offense (US) s. = infracţiune
failure to act = inacţiune
injurious adj. = prejudiciabil, vătămător, dăunător
to prosecute v.t. = a acuza, a trimite în judecată
seriousness s. = gravitate
felony (US) s. = infracţiune gravă
imprisonment s. = închisoare, detenţie, încarcerare
in excess of = pentru cel puţin
misdemeanor (US)/misdemeanour (UK) s. = infracţiune mai puţin gravă, cu grad redus de pericol social, contravenţie
treason s. = trădare

overt acts = acte ce pregătesc comiterea unei infracţiuni
to overthrow v.t. = a răsturna
indictable offence (UK) = infracţiune deosebit de gravă
indictment s. = punere sub acuzare, act de acuzare, rechizitoriu
charge s. = acuzaţie
liable adj. = răspunzător, responsabil
term s. = perioadă, termen
summary offence (UK) = delict minor, contravenţie
either-way offence (UK)/hybrid offence = categorie intermediară de infracţiuni pentru judecarea cărora competenţa aparţine Curţii Magistraţilor sau Tribunalului Coroanei
sedition s. = revoltă, răzvrătire
conspiracy s. = conspiraţie, complot, lovitură de stat
riot s. = revoltă, răscoală, tulburări sociale
affray s. = încăierare, violenţă, scandal
harassment s. = hărţuire
perjury s. = sperjur
homicide s. = omucidere, omor, crimă
assault and battery = maltratare, agresiune fizică, atac corporal
rape s. = viol
bigamy s. = bigamie
theft s. = furt
robbery s. = jaf, tâlhărie
burglary s. = spargere, intrare prin efracţie, furt prin efracţie
deception s. = înşelăciune, fraudă
blackmail s. = şantaj
criminal damage = prejudiciere a proprietăţii ca urmare a comiterii unei infracţiuni

8.1. Find synonyms in the text for the following words and expressions:

1. an injurious act = ...
2. liable to or deserving punishment = ...

3. violation = ...
4. inaction = ...
5. harmful = ...
6. a serious crime = ...
7. for more than = ...
8. under the terms of which = ...
9. fraud, misrepresentation = ...
10. criminal mischief = ...

8.2. Which are the recurrent features occurring in the above-mentioned definitions of crimes/offences?

- public wrong/a social harm
- punishable by the state
- .....
- .....
- .....
- .....

8.3. Match the following crimes with their definitions:

1. treason
2. sedition
3. conspiracy
4. riot
5. violent disorder
6. affray
7. harassment
8. perjury

a) An agreement between two or more persons to engage jointly in an unlawful or criminal act, or to accomplish a lawful end by unlawful means;

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b) the speaking or writing of words that are likely to incite ordinary people to public disorder or insurrection;
c) when an individual wilfully makes a false statement during a judicial proceeding, after he or she has taken an oath to speak the truth;
d) when three or more persons, present together, use or threaten unlawful violence;
e) a type of disorderly conduct involving the threat or intentional use of unlawful violence;
f) the betrayal of one's own country by waging war against it or by consciously or purposely acting to aid its enemies;
g) the act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands;
h) an offence committed when 12 or more persons, present together, intentionally use or threaten unlawful violence for a common purpose;

Reading

Crimes against the Person

Under this category, we will deal with: homicide, assault and battery, rape and bigamy.

1. Homicide

The following are unlawful homicides: murder, manslaughter, the aiding and abetting of suicide, infanticide.

According to a traditional definition, **murder** is the 'unlawful killing of a reasonable creature who is in being and under the Queen's peace, with malice aforethought...the death following within a year and a day'.

Manslaughter is the unlawful killing of another, without malice aforethought.

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There are two categories of manslaughter: voluntary and involuntary. **Voluntary manslaughter** arises when a person causes the death of another in circumstances which would have amounted to murder if the act had not been done under provocation, with diminished responsibility or in pursuance of a suicide pact. **Involuntary manslaughter** is the killing of a person without *mens rea.* There are several ways of committing this offence:

- killing as the result of an unlawful and dangerous act
- gross negligence
- killing by a reckless act or omission
- in relation to intoxication

Infaticide arises where a woman willfully causes the death of her child, being under the age of 12 months, if, at the time she did the act causing death, the balance of her mind was disturbed by reason either of her not having recovered from the effects of the birth, or by reason of the effect of lactation consequent upon the birth.

2. Assault and battery

Fill in the blank spaces with the following words:

aggravated, unwanted, physical, infliction, commission, hit, round, application, battery, reasonable, malicious

The word 'assault' is often loosely used to include the two offences of 'assault' *and* '...', which are normally commited together. Yet, there are cases where an assault may be made without a battery, and the other way ....

A common assault consists in attempting to apply ... force to another person in such a way as to cause ... fear in the mind of the person that the act will be committed. A battery is the actual ... of force to another.

Assault without battery is illustrated by the act of shaking a stick at a person who is close enough to be .... Any degree of hostile or ... force suffices for the ... of a battery.

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... assaults include assault with intent to resist lawful arrest, unlawful and ... wounding and the ... of grievous bodily harm.

3. Rape is committed if a man: (a) has sexual intercourse with with a person who at the time of the intercourse does not consent to it; and (b) at the time he knows that the victim does not consent to it, or he is reckless as to whether he or she consents or not.

4. Bigamy

Someone is guilty of bigamy if, being married, marries any other person during the life of his or her husband or wife.

Word study

reasonable creature = fiinţă umană
in being = care s-a născut
under the Queen's peace = pe timp de pace
malice aforethought = premeditare
manslaughter s. = ucidere din culpă
voluntary manslaughter = omor cu circumstanţe atenuante
involuntary manslaughter = ucidere involuntară
mitigating circumstances = circumstanţe atenuante
mens rea (Lat.) = intenţie criminal
recklessness s. = imprudenţă
intoxication s. = beţie, stare de ebrietate
infanticide s. = infanticid, pruncucidere
assault and battery = maltratare, agresiune fizică, atac corporal
to inflict v. = a aplica
malicious adj. = răuvoitor, premeditat, intenţionat
grievous bodily harm = vătămare corporală gravă
intercourse s. = contact, relaţie, raport (sexual)
bigamy s. = bigamie

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8.4. Choose the correct answer(s) and underline it (them):

1. In the definition of murder, a 'reasonable creature who is in being' signifies;
a) a human being, because there can be no murder of an unborn person;
b) a human being, as opposed to an animal, even a child who is not born;
c) a human body, as opposed to an animal.

2. Voluntary manslaughter is committed when the defendant had the intent to kill, but ... circumstances, such as provocation, reduce the offence to manslaughter.
a) mitigating; b) lesser; c) minimizing.

3. In ..., death results from an accident or from an unlawful act of omission.
a) voluntary manslaughter;
b) involuntary manslaughter;
c) murder.

4. Another form of manslaughter is causing death in the ... of an unlawful and dangerous act.
a) commission;
b) offence;
c) omission.

5. Involuntary manslaugther also refers to:
a) killing with intent;
b) killing by an objective act of omission;
c) killing with subjective recklessness as to the risk of death or bodily harm.

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6. Pointing a gun at someone constitutes:
a) assault without battery;
b) assault and battery;
c) battery without assault.

7. Aggravated assaults include:
a) assault with intent to resist lawful arrest;
b) assault occasioning actual bodily harm;
c) assault with intent to kill.

8.5. Odd one out:

a) felony, misdemeanour, either-way offence, serious offence, indictable offence
b) sedition, riot, violent disorder, affray, fear or provocation of fear
c) murder, voluntary manslaughter, involuntary manslaughter, negligent manslaughter, infanticide
d) illegal killing, human being, war time, premeditation, a year and a day

Reading

Crimes against Property

The most important offences against property are connected with theft and with criminal damage to property.

1. Theft and allied offences

Theft

A person is guilty of **theft** if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

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Robbery

Robbery takes place when a person steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or seeks to put any person in fear of being then and there subjected to force.

Robbery is violent theft.

Burglary

A person will be guilty of burglary if (a) he enters any building or part of a building as a trespasser and with intent to steal anything in the building or of inflicting therein grievous bodily harm or of raping any person therein or doing unlawful damage to the building, or (b) having entered any building or part of a building as a trespasser, he steals or attempts to steal anything therein or inflicts or attempts to inflict grievous bodily harm on any person therein.

Formerly there was a distinction between burglary (a nocturnal offence) and housebreaking (a daytime offence).

Aggravated burglary will be committed if the burglar carries any firearm, imitation firearm, weapon of offence.

Deception

Fill in the blank spaces with the following words:

remuneration, recklessly, default, representation, overdraft, law, forego

Deception is a false ..., by words or conduct, of a matter of fact or ... that is made deliberately or ... to another person. It is involved in several crimes: obtaining property, obtaining an ..., an insurance policy, an annuity contract, or the opportunity to earn ... or to win money by betting, obtaining any services, securing the remission of any legally enforceable liability with intent to make permanent ... in whole or in part, causing

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someone to wait for or ... a debt owing to him, obtaining an exemption from or abatement of liability to pay for something.

Blackmail

This offence is committed by a person who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces.

Handling stolen goods

A person handles stolen goods if, knowing or believing them to be stolen, he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal, or realization by or for the benefit of another person.

2. Criminal damage

Under the Criminal Damage Act 1971, there are three offences:

- the offence of destroying or damaging property. This offence takes an aggravated form where the intent (or recklessness) in relation to the destruction of or damage to the property is connected with an intent to endanger the life of another person, or with reckless disregard of such danger
- the offence of threatening to destroy or damage property
- the offence of possessing anything with intent to destroy or damage property

Word study

theft s. = furt
allied offences = infracţiuni conexe
dishonestly adv. = cu rea-credinţă
to appropriate v.t. = a-şi însuşi, a lua, a fura
to deprive v.t. = a priva, a lipsi de
robbery s. = jaf, tâlhărie

subjected to force = supus, expus forţei, violenţei
burglary s. = spargere, intrare prin efracţie, furt prin efracţie
trespasser s. = intrus, persoană neautorizată, persoană care încalcă dreptul de proprietate sau de folosinţă
damage s. = daună, pagubă, prejudiciu
firearm s. = armă de foc
deception s. = înşelăciune, fraudă
overdraft s. = depăşire de cont, retragere de numerar peste limita disponibilă în cont
annuity s. = anuitate, venit annual
remission s. = suspendare
default s. = neîndeplinire a obligaţiilor
to forego v. = a renunţa
exemption s. = scutire, exonerare
abatement s. = reducere
liability s. = răspundere, obligaţie
blackmail s. = şantaj
handling stolen goods = infracţiunea de primire de bunuri furate
to damage v. = a vătăma, a prejudicia
criminal damage = prejudiciere a proprietăţii ca urmare a comiterii unei infracţiuni

8.6. Choose the correct answer(s) and underline it (them):

1. The dishonest appropriation of property belonging to someone else with the intention of keeping it permanently refers to the offence of:
a) theft;
b) robbery;
c) burglary.

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2. When a person has general persmission to enter a building but, at the time of the relevant entry, knows that he is exceeding the limits of that permission (e.g. by entering with intent to steal), he commits:
a) theft;
b) robbery;
c) burglary.

3. Aggravated burglary takes place if the burglar carries any:
a) firearm;
b) imitation firearm;
c) article calculated to cause injury or incapacity.

4. 'Any legally enforceable liability' means:
a) all or part of an existing liability to make payment;
b) any liability to be;
c) any debt that has been paid.

5. 'Obtaining an exemption from or abatement of liability to pay for something' means:
a) obtaining an exemption from any duty;
b) obtaining exemption from liability to make a payment;
c) obtaining an exemption from liability to perform an act.

6. In case of blackmail:
a) an unwarranted demand is made with menaces;
b) the purpose is financial gain for oneself or someone else;
c) there may be intent to cause loss to the person threatened.

7. Firing at a window of a room when there is someone in the room and there is danger from broken glass, involves the aggravated form of the following offence:
a) robbery;
b) housebreaking;
c) criminal damage.

Final tests

8.7. True or false? Correct the false sentences.

1. A felony is considered a crime of high seriousness.
2. A misdemeanor is a lesser criminal act.
3. In the United States, the federal government generally considers a crime punishable with incarceration for one year or less to be a felony.
4. A misdemeanor is sanctioned by less severe penalties (imprisonment for one year or more).
5. 'Information' refers to the process whereby a person is accused of a criminal offence and tried before a judge and jury.
6. The *mens rea* for murder is traditionally known as malice aforethought, therefore murder is an offence of specific intent.
7. Voluntary manslaughter arises when the defendant had the intent to kill, but mitigating circumstances such as diminished responsibility, reduce the offence to manslaughter.
8. Involuntary manslaughter involves death resulting from an accident or from an unlawful act of omission.
9. The execution of a criminal under the laws of a state is unlawful homicide.
10. Assault is an intentional or reckless act apprehended as an act of violence, whereas battery is the actual application of force to a person.
11. In case of blackmail, the menaces may include a threat of violence or of detrimental action.
12. Robbery is the unlawful taking of property from a person's immediate possession by the actual use of force against that person.
13. Burglary is the breaking and entering any structure, such as a building, with the intent to commit a crime.
14. It is not an offence to assist a thief to convey the stolen goods to a hiding place knowing or believing it to be stolen property.

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15. Criminal damage in its aggravated form is committed if the danger to life arises from the damage to the property.

8.8. Have you heard of the following crimes? Look up the following words in a dictionary of legal terms:

arson, bribery, embezzlement, extortion, forgery, libel, pickpocketing, slander, smuggling, uttering

8.9. Translate into English:

CAPITOLUL I (Codul Penal)
Infracţiuni contra vieţii
Art. 189
Omorul calificat
(1) Omorul săvârşit în vreuna dintre următoarele împrejurări:
a) cu premeditare;
b) din interes material;
c) pentru a se sustrage ori pentru a sustrage pe altul de la tragerea la răspundere penală sau de la executarea unei pedepse;
d) pentru a înlesni sau a ascunde săvârşirea altei infracţiuni;
e) de către o persoană care a mai comis anterior o infracţiune de omor sau o tentativă la infracţiunea de omor;
f) asupra a două sau mai multor persoane;
g) asupra unei femei gravide;
h) prin cruzimi,
se pedepseşte cu detenţiune pe viaţă sau închisoare de la 15 la 25 de ani şi interzicerea exercitării unor drepturi.
(2) Tentativa se pedepseşte.
Art. 192
(2) Uciderea din culpă ca urmare a nerespectării dispoziţiilor legale ori a măsurilor de prevedere pentru exerciţiul unei profesii sau meserii ori pentru efectuarea unei anumite activităţi se pedepseşte cu închisoarea de la 2 la 7 ani. (...)

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8.10. Answer the following questions:

1. What is a crime? Is it different from an offence?
2. Classification of crimes (US).
3. Classification of crimes (UK).
4. Distinguish between murder and manslaughter. What is meant by 'malice aforethought' in the former?
5. What is the difference between voluntary and involuntary manslaughter?
6. Give examples of aggravated assault.
7. What is the difference between theft and robbery?
8. Give examples of aggravated burglary.
9. Give examples of crimes deception is involved in.
10. Define blackmail.

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UNIT 9

THE LAW OF TORT

Learning objectives:

In this unit, you will:

- acquire the basic vocabulary related to the law of tort (definition of a tort, tort v. crime, tort v. breach of contract, tort v. breach of trust, types of wrongs, remedies, etc.)
- discover the Romanian equivalents of the relevant tort law terms
- practise the vocabulary by completing various exercises
- improve translation skills
- develop capacity to draw a comparison between two legal systems

Reading

Defining the Scope of Torts

The law of tort is a branch of civil law covering situations in which a party, injured as a result of another party's wrongdoing, is entitled to a legal remedy. Its rules are generally judge-made.

A **tort** is a wrongful act or omission for which damages can be obtained in a civil court by the person wronged, other than a wrong that is only a breach of contract. (*Oxford Dictionary of Law*)

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A tort can also be defined by reference to the differences between a tort and other wrongs.

1. Tort and crime

Crimes are offences, prosecuted and punished by the state.

Torts are not punished. The injured party sues the tortfeasor (the guilty party) in a civil court.

2. Tort and breach of contract

The rights and duties arising out of a contract are mainly devised by the contracting parties.

In the case of tort, the rights and duties are fixed by law.

If a breach of a duty in tort causes injury to a person, he has the right to sue.

A situation may give rise to liability in both contract and tort.

3. Tort and breach of trust

Torts are common-law wrongs, trusts are governed by equity.

The duties arising under a trust are the creation of the trust itself, in tort they are fixed by the law.

In order to succeed in an action for tort, the claimant must prove that he has suffered harm and the defendant has violated his legal right(s).

It is not normally necessary to prove that the defendant had the intent of producing the consequences of his act. If intention can be proved, the defendant is at fault.

Proof of fault is not necessary in cases of **strict liability**. For instance:

- Breaches of certain strict duties
- The principle in accordance with which an employer is liable for the torts of his employee
- Liability for the harm done by dangerous animals

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A parent is not liable for the torts of his children except when:

- He is vicariously liable, by having commissioned the tort, or
- He is personally liable for the tort of negligence by reason of allowing his child unreasonable opportunity of doing mischief

As for **vicarious liability,** the rule is that a person who authorizes the commission of a tort, expressly or impliedly, by another, is liable in damages as if he had committed the tort.

Vicarious liability is indirect liability.

Word study

tort s. = faptă ilicită cauzatoare de prejudiciu, delict civil
liability in tort/tortious liability/law of tort = răspundere civilă delictuală
tortfeasor s. = autorul unei fapte ilicite
wrong s. = faptă ilicită
injured party = parte vătămată, prejudiciată
to sue v.t. = a da în judecată, a intent un proces (civil)
breach of contract = încălcare/nerespectare a prevederilor contractuale
to arise out of = a rezulta din, a decurge din
to devise v.t. = a inventa, a elabora
contracting parties = părţi contractante
trust s. = încredere
breach of trust = abuz de încredere
to be at fault = a fi vinovat
vicarious liability = răspundere indirectă
to commission v.t. = a autoriza, a însărcina
mischief s. = prejudiciu, faptă ilicită
expressly adv. = expres
impliedly adv. = tacit
liable adj. = răspunzător

9.1. Choose the correct answer(s):

1. The law of tort:
a) is mainly concerned with providing compensation for personal injury and property damage;
b) punishes the commission of a tort;
c) arises out of the breach of contract.

2. Torts must be distinguished from crimes and …
a) breaches of contract;
b) performance of contract;
c) major offences.

3. A tort:
a) is a criminal wrong;
b) is a civil wrong;
c) entitles a person who is injured by its commission to claim compensation.

4. Certain areas where proof of fault in the sense of intention or negligence is not necessary, are cases of:
a) strict liability;
b) vicarious liability;
c) indirect liability.

Reading

Types of Wrongs and Remedies

There are mainly four types of wrongs for which the law of tort offers remedy.

1. Negligence

The tort of negligence consists in the causing of foreseeable damage by unreasonable behaviour, where there is

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a duty of care, i.e. an obligation a person owes to others to act reasonably towards them. A negligence claim may arise out of a wide range of contexts: road accidents, accidents in the workplace, medical malpractice, etc.

If a claimant is to succeed against a defendant in a negligence suit, he must establish that:

(1) the defendant owed him a duty of care,
(2) the defendant breached that duty and
(3) the claimant suffered a loss or injury as a result of that breach.

Unlike a criminal case, which requires proof beyond reasonable doubt, in a civil case the burden of proof lies with the claimant to establish the three requirements on a balance of probabilities.

There cannot be a claim in negligence unless the damage is compensable. The damage must have been caused by the breach of duty.

2. Defamation

Fill in the blank spaces to find out the principles establishing defamation:

slanderous, party, tort, defamatory, onus, slanderous, verbally, published, permanent, incompetent, actionable

English law divides the ... of defamation into two categories: libel and slander. While slander consists of ... statements made ... in a temporary form, libel refers to defamation made in a ... form, which includes writing, print, electronic communication, broadcast, sculpture, painting, etc.

... statements which are ... *per se* include saying that a person has committed a serious criminal offence, that he is suffering from a contagious disease, that he is ... to perform his job, that a woman is unchaste.

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In a defamation action, the ... is on the claimant, who has to prove that:

(1) the statement was indeed defamatory (damaging to his ...),

(2) it made reference to the claimant,

(3) it was ..., i.e. communicated to a third ...

3. Nuisance

Nuisance is an act or use of something that causes inconvenience, disturbance or harm. There are two types of nuisance: private nuisance and public nuisance.

A private nuisance claim may arise out of a situation where a person's use or enjoyment of his land is unreasonably affected by a neighbour's activities or lifestyle.

Public nuisance occurs when a person acts in a way which threatens the health, morals, safety, comfort, convenience, or welfare of a community.

4. Trespass

Trespass is an unlawful intrusion that interferes with one's person or property. It occurs when a person, by a positive act, directly invades the protected interests of another person (possession of land or goods, bodily integrity, freedom of movement, etc). A person who enters another's property without permission can be sued for trespass whether he has caused damage or not. There is no need to prove damage, trespass is actionable *per se*.

Remedies

The main remedy for a tort is an action for damages. Damages are the predominat remedy.

The aim of the award of damages is to put the claimant back in his original position so far as money can do this.

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In some situations of repeated trespass or nuisance, the court may grant an injunction ordering the defendant to refrain from committing or repeating the wrongful act.

Under some circumstances, the claimant may be entitled to a *quia timet* injunction restraining conduct that is likely to cause substantial damage before any damage has actually been caused.

An interim injunction refers to a provisional order which may be granted pending a full trial of the action on the merits of the case.

Word study

foreseeable adj. = previzibil
duty of care = obligaţia de diligenţă
suit s. = proces, acţiune civilă
burden of proof = sarcina probei
to lie with = a-i reveni (cuiva)
defamation s. = defăimare
libel s. = calomnie (în scris), defăimare, insultare
slander s. =insultă, calomnie (verbală)
onus of proof/onus probandi = sarcina probei; *the onus of proof/onus probandi is on...* sarcina probei incumbă ...
per se (Lat.) = pentru sine, în sine, în numele său
to actionable per se = a fi obiectul uni litigiu în sine
nuisance s. = neplăcere, prejudiciu, daună
trespass s. = încălcare a legii
action for damages s. = acţiune în despăgubiri
remedy s. = remediu, reparare (a unui prejudiciu)
award of damages = acordare de despăgubiri
to grant v.t. = a acorda
injunction s. = ordin (prohibitiv)
to refrain from v.i. = a se abţine de la
wrongful act = faptă ilicită
quia timet (Lat.) = pentru că se teme

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provisional order = ordin provizoriu
pending adj. = pendinte, pe rol
merits of the case = argumentele pe care se bazează o cauză, temeiurile unei acţiuni

9.2. True or false?

1. There is often an overlap between crime and tort.
2. Someone who drives negligently always commits the tort of negligence against a person.
3. A person can never be held responsible for torts committed by others.
3. Torts actionable *per se* are those torts actionable without proof of loss.
4. Reputation is protected by the torts of trespass and nuisance.
5. Libel refers to the tort of publishing a false statement in some temporary form that is likely to injure a person's reputation in the opinion of others, or which makes him look ridiculous.
6. The tort of making a false oral statement against a living person is called slander.
7. Private nuisance arises when there is reasonable interference with a person's use or enjoyment of his land.
8. Public nuisance is unlawful annoyance or harm which affects the public generally.
9. Public nuisance can be prosecuted if interference with public life is substantial enough.
10. Trespass means direct interference with the person, goods or land of another.

9.3. *Halsey* v. *Esso Petroleum Co. Ltd* (1961)

In *Halsey* v. *Esso Petroleum Co. Ltd* (1961), acid smuts from the defendant's oil depot injured the plaintiff, both by

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soiling clothing which was drying in his garden and by damaging the paintwork of his car, which was standing in the road outside his house. It was held that damage to the clothing affected the enjoyment of his land and was...

a) negligence;
b) a private nuisance;
c) a public nuisance;
d) trespass,

while damage to the car affected him as a member of the public generally and was therefore...

a) negligence;
b) a private nuisance;
c) a public nuisance;
d) trespass.

9.4. Choose the right answer(s):

1. The principal remedy in tort is:
a) the offender is sent to prison;
b) there is an award of damages to compensate the injured party;
c) the defendant is put back in his original position.

2. Other remedies include:
a) a sentence;
b) an injunction;
c) an order allowing repeated trespass or nuisance under certain circumstances.

3. An injunction is:
a) a civil wrong;
b) a proper remedy under some circumstances;
c) an order of the court commanding something to be done or forbidding something.

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9.5. Translate into English:

1. De obicei, un act ce intră sub incidenţa legii penale va fi şi delict civil.
2. Autorul faptei va fi dat în judecată de către victimă pentru a obţine daune.
3. Victima are dreptul la repararea prejudiciului.
4. Încălcarea anumitor drepturi individuale sau care privesc proprietatea este cunoscută sub denumirea de delict civil.
5. Răspunderea civilă delictuală impune de regulă un element de vinovăţie din partea autorului prejudiciului.
6. Reclamantul trebuie să dovedească faptul că acţiunea sau, în anumite cazuri omisiunea, a fost săvârşită fie cu intenţie, fie din neglijenţă.
7. Pentru a-l repune pe reclamant în situaţia iniţială, trebuie evaluată valoarea bunurilor distruse sau costul reparaţiilor.
8. Vătămarea unei persoane nu înseamnă neapărat comiterea unui delict civil dacă nu a fost încălcat un drept legal.
9. Faptul că angajatorul este indirect răspunzător pentru faptele angajaţilor nu afectează răspunderea autorului iniţial al prejudiciului.
10. Dacă o persoană consimte să suporte vătămarea, nu poate iniţia o acţiune în despăgubire.

9.6. Answer the following questions:

1. How do you define a tort?
2. Can torts be crimes too?
3. What is the difference between a tort and a breach of contract?
4. What is the difference between a tort and a breach of trust?
5. What is vicarious liability?
6. The tort of negligence: explain the role of the duty of care.
7. Of how many types is defamation?

8. What is nuisance?
9. Define trespass.
10. Which is the purpose of awarding damages?
11. What remedies can a claimant be awarded in court?
12. What is an interim injunction?

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UNIT 10

PROPERTY LAW

Learning objectives:

In this unit, you will:

- become familiar with the notions of property and property law
- identify the main types of property
- enlarge the vocabulary related to property law by completing various exercises
- enhance translation and communication skills

10.1. Translate into Romanian:

- realty, personalty
- freehold
- lease, leasehold
- chattels, chattel real
- estate, personal estate, real estate
- easement, easement of necessity

Reading

Types of Property

The definition of property law is related to the definition of property.

In short, **property** is the right of ownership, it refers to anything that can be owned.

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In this framework, according to *Oxford Dictionary of Law,* the law of property is the category of law dealing with property rights *in rem* (involving or determining the status of a thing, and therefore the rights of persons with respect to that thing).

A distinction is usually made at two levels:

1. between **real property/realty** (land and incorporeal hereditaments) and **personal property/ personalty** (the property which does not comprise land or incorporeal hereditaments).
2. between **tangible property** (having a physical existence, such as chattels and land) and **intangible property** (choses in action, including intellectual property, and incorporeal hereditaments).

Ownership v. Possession

Ownership and **possession** are two different notions. Since the owner is the person entitled to all legal rights over that property, rights including exclusive use and possession of it, ownership stands for the legal concept, whereas possession is a matter of fact.

For instance, if the owner of a car lends it to another person for a certain length of time, the lender is still the owner of the car, although the borrower has possession of the car for that period of time.

Acquisition of ownership

In order to discover how ownership can be acquired, fill in the blank spaces with the given words and phrases:

order, intestacy, derivatively, inheritance, abandoned, previously, ownership

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Ownership may be acquired as follows:

a. originally – by asserting ... and possession over something that nobody else had ... owned or that the previous owner had ...;
b. ... – by acquiring ownership from a previous owner either with his consent (e.g. sale, gift) or without consent (by a court ...);
c. By succession – by ... on the death of the former owner, either by will or upon ...

Transfer of property

Most legal systems distinguish between a promise to alienate property and the actual alienation. The promise may be fully enforceable between the parties, but until property is transferred, the original owner has a real right in the property.

The contract and the conveyance take part concurrently in many transactions.

As for the transfer of property, it depends on the type of property.

Fill in the blank spaces with the English equivalents of the following words and expressions:

act autentic, lucruri, acordat, proprietate mobiliară, succesiune, transfer al proprietății, real, vânzare

The transfer of property may take place in two ways:

1. *Inter vivos* (during the life of the transferor), according to the type of property:

a. Real property

- Transfer upon ... (by a deed of ...)
- Leases (... under seal)
- Gifts of land must also be by ...

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b. ...

- ... in possession, commonly by mere delivery. The delivery may be ... (handing over the chose itself) or constructive (handing over the means to obtain it). E.g. a key to open the box where it is kept.
- Choses in action , which must be assigned as laid down by law

2. ... upon death

Word study

property s. = proprietate, drept de proprietate, bunuri
ownership s. = (drept de) proprietate, posesie
owner s. = proprietar
in rem (Lat.) = care ţine de lucruri/obiecte, real
in personam (Lat.) = în persoană, personal, cu privire la persoană, împotriva unei persoane
real property/realty/real estate = proprietate imobiliară, imobile, bunuri imobiliare
hereditament s. = moştenire, succesiune, masă succesorală
corporeal hereditaments = drepturi succesorale corporale
incorporeal hereditaments = bunuri/drepturi necorporale/ incorporale care intră în masa succesorală
personal property/personalty = proprietate personală, bunuri personale
tangible property = active tangibile, bunuri materiale
chattels s. = bunuri personale, posesiuni, patrimoniu
intangible property = active intangibile/necorporale, drepturi de proprietate incorporale
chose s. = lucru, bun
choses in action = dreptul de a acţiona în instanţă/de a chema în judecată
chose in possession = drept corporal de proprietate
easement s. = servitute
possession s. = posesiune, posesie, stăpânire

acquisition of ownership = dobândire a proprietăţii
intestacy s. = succesiune ab intestat/legală/fără testament
inheritance s. = moştenire, succesiune
gift s. = dar, donaţie
transfer of property = transmitere a proprietăţii
to alienate v.t. = a înstrăina
enforceable adj. = executoriu, opozabil
conveyance s. = transfer (de proprietate)
concurrently adv. = simulatan, concomitent
deed s. = 1. faptă, acţiune; 2. înscris, act autentic, document
delivery s. = livrare, transport
to assign v.t. = 1. a ceda, a transfera; 2. a numi, a desemna
to lay down v.t. = a stabili, a prevedea

10.2. Match the following words and phrases with their definitions:

1. hereditament
2. corporeal hereditament
3. incorporeal hereditament
4. chose
5. chose in possession
6. chose in action

a. a right that can be enforced by a legal action in order to recover a debt, money or thing;
b. a thing;
c. tangible item of property, such as land and buildings;
d. from a historical perspective, any real property that can be inherited;
e. a tangible item capable of being actually possessed and enjoyed; personal property for which title and possession unite in the same person;
f. an intangible right in land, such as an easement.

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10.3. Translate into English:

1. Posesia este o stare de fapt, pe când proprietatea este o stare de drept. Posesia este puterea de fapt pe care o persoană o exercită asupra uni bun corporal individual-determinat.
2. Dreptul de proprietate privată este dreptul real principal prin care titularul său se bucură de anumite atribute: de posesie, folosință și dispoziție asupra bunului apropriat în formă privată. Aceste atribute sunt exercitate în mod absolut, exclusiv și perpetuu, cu respectarea limitelor materiale și juridice.
3. Actul autentic este un înscris încheiat cu respectarea formelor legale şi a cărui autenticitate este confirmată de semnătura şi ştampila autorităţii care l-a întocmit sau verificat. Actul autentic prevede transmiterea titlului de la vânzător la cumpărător.
4. Dreptul de dispoziţie al proprietarului se poate manifesta prin încetarea temporară de a exercita acte de stăpânire asupra bunului său. Prin aceasta însă, dreptul de proprietate nu se stinge, el nefăcând obiectul prescripţiei extinctive.

10.4. Answer the following questions:

1. How do you define property?
2. What does property law deal with?
3. At how many levels can you distinguish between the types of property?
4. What does *in rem* mean?
5. Explain the differences between *realty* and *personalty.*
6. Explain the term *hereditament.*
7. What does *chose* refer to?
8. Distinguish between ownership and possession.
9. How can ownership be acquired?
10. How can the transfer of property take place?

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UNIT 11

CONTRACTS / CONTRACT LAW

Learning objectives:

In this unit, you will:

- acquire the basic vocabulary related to the law of contract (definition of contracts, requirements for the validity of contracts, discharge of contract, defective contracts, matters affecting the validity of contracts, remedies, etc.)
- discover the Romanian equivalents of the relevant contract law terms
- practise the specific vocabulary by completing various exercises
- develop translation and communication skills

11.1. Translate into Romanian:

- to enter into a contract
- to conclude a contract
- to avoid a contract
- void contract
- voidable contract
- enforceable contract
- to perform a contract
- to break a contract
- breach of contract
- to reach an agreement
- to render a contract void

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Reading

The Basics of Contracts

1. Contracts are part of everyday life. People commonly associate contracts with formal documents, but when they pay for a service, for instance, they are also entering into a contract.

Although of vital importance in business, lying at the basis of most commercial transactions, such as sale of goods and land, the giving of credit, insurance etc, a **contract** is simply an agreement which the law will recognize.

A more formal definition of a **contract** involves: 1. an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; 2. the writing that sets forth such an agreement." (*Black's Law Dictionary*)

The law of contract provides a regulatory framework within which commercial activities can operate.

2. Requirements for the validity of contracts

English law will recognize an agreement as a contract if there is an **offer** by one party and an **acceptance** by the other. In addition, the two parties must agree exactly to the terms of the contract. This is called **mutual agreement.**

An agreement is usually expressed by the unconditional acceptance of an offer. Sometimes, the law infers agreement from certain actions, such as signing a contract or beginning to carry out the terms of the bargain.

There is a difference between the situation where negotiations are in progress and the situation where a binding agreement has been reached.

The parties can agree what rights and obligations arise under the contract and also how far the law determines their relations under that contract.

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The terms of the contract can be agreed by the parties in two ways:

a) Expressly

Express terms are those terms specifically mentioned and agreed by the parties when contracting.

b) impliedly

There are several **requirements** that must be met for an agreement to be legally binding:

(1) There must be **consideration** (unless the contract is by deed).

English law will only recognize a bargain, not a mere promise. Each party must provide or promise to provide some consideration in exchange for what the other party is to provide.

Fill in the blank spaces with the given words in order to find out the definition of 'consideration':

binding, validity, arise out of, forbearance, deed, price

Consideration is an act, …, or promise by one party to a contract that constitutes the … for which he buys the promise of the other. It is essential to the …of any contract other than one made by ... Without consideration an agreement not made by deed is not …; it is a *nudum pactum* (naked agreement), governed by the maxim *ex nudo pacto non oritur action* (a right of action does not … a naked agreement).

(2) The parties must have an **intention** to create legal relations.

There is a strong presumption that business agreements are intended to create legal relations, but in most cases, the parties do not intend to reach legally binding agreements and to settle disputes in a court of law.

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(3) The parties must have **capacity to contract**, meaning that the people who enter into a contract must be legally competent to conclude contracts.

(4) The agreement must comply with any **formal legal requirements**. As a general rule, no particular formality is required for the creation of a valid contract. It may be oral, written, partly oral and partly written, or even implied from conduct.

Certain transactions are, however, valid only if they are effected by deed. Promises for no consideration, and some bills of sale (mortgages of goods), are void unless in this form. Conveyances of land and leases for over three years must be completed by deed.

Contracts which must be in writing, but not necessarily by deed, include bills of exchange, cheques and promissory notes, those concerning land, contracts of marine insurance, the transfer of shares in a company, and legal assignment of debts. Such contracts are void in the absence of writing.

(5) The agreement must be **legal.**

Certain types of agreements are obviously "contrary to public policy". For example, a hired murderer will never be allowed to recover damages if his principal refused to pay the agreed price.

(6) The agreement must not be rendered void either by some common-law or statutory rule or by some inherent defect, such as operative mistake. Certain contracts, though valid, may be liable to be set aside by one of the parties on such grounds as misrepresentation or the exercise of undue influence.

3. Discharge of contract

A contract/contractual obligations may be discharged (i.e. terminated) by performance, by agreement, by frustration, and by breach.

The notion of frustration requires further explanation in this context. Thus, unforeseen events (such as sickness,

accident, war, the interference of third parties and legislation which renders further performance illegal) may occur in the course of the performance of a contract intended to last over a period of time. A person seeking to avoid a contract on the ground of frustration must prove that the event has rendered the contract more onerous than he had expected, but also that it has destroyed the whole foundation of it.

4. Defective contracts

In some situations, although the agreement is recognized by the law, the contract will only be given limited effect or no effect at all.

Defects can render a contract *unenforceable, voidable* or *void.*

When a contract is **unenforceable,** it exists, but neither party can sue the other. Certain contracts need not be in writing, but no party can be sued for breach in the absence of written evidence.

Either party can withdraw from the contract in the case of a **voidable** contract, since most such agreements are made by minors or by persons incapacitated by drunkenness or insanity. Voidable contracts also include those induced by misrepresentation, duress or undue influence.

If a contract is rendered **void**, it is destitute of all legal effect despite the attempt of the parties to contract.

Thus, a contract may be void if there is a common mistake with regard to an essential, fundamental issue, such as mistake as to the identity of the other party.

5. Matters affecting the validity of contracts

The factors which will render a contract invalid are:

Mistake

Mistake of law will never affect the validity of a contract, but mistake of fact may affect the contract and, if enough serious, render the contract void.

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Among the mistakes of fact which render a contract void are:

- *Mistakes concerning the subject-matter of the contract*, e.g. the property sold.

A mutual mistake occurs where the parties are thinking about different things. Neither is right, neither is wrong, but they have never really agreed.

- *Mistaken signing of written documents* if the mistake is a fundamental one, the signing has been fraudulently induced and if the signer proves that he or she has not been negligent.

- *A mistake by one party as to the identity of the other party.*

In some cases, as a consequence of mistake, the court may allow one party the equitable **remedy** of *rescission.*

Rescission is the setting aside of a voidable contract as if it had never existed. The right of rescission cannot be exercised unless *restitutio in integrum* is possible. Unless it is possible to restore both parties to their original positions, and it cannot be exercised this involves upsetting rights acquired by third parties. Thus, a buyer of goods cannot rescind if he cannot return the goods and a seller of goods cannot rescind if they have been resold to a third party.

Misrepresentation

Misrepresentation is an untrue statement of fact (not of law), made by one party to the other in the course of negotiating a contract, with a view to inducing the other party to enter into the contract.

A person who has entered into a contract as a result of a misrepresentation has two remedies: he may be entitled to rescind the contract or to be compensated by damages.

Duress

Duress is the pressure put on a person to act in a particular way.

If a person enters into a contract by reason of actual or threatened violence, for example unlawful confinement or violence threatened to his wife, children or parents, the contract is voidable for duress.

Today, economic coercion can also be duress.

Undue influence

It is a equitable doctrine under which a contract may be voidable if it derives from pressure or coercion short of duress.

Where undue influence is deemed to exist, either by proof or presumption, the contract is voidable, but the right to rescind must be exercised within a reasonable time of the influence being withdrawn.

6. Remedies

The main remedies available to the party injured in case of a breach of contract are: damages, specific performance, injunctions, and rescission and rectification.

Lack of capacity to contract

Fill in the blank spaces with the given words and phrases:

perform, temporarily, infants, enforceable, damages, recover, insane, capacity, to sue, to avoid.

The general rule is that everyone is fully capable of entering into contracts, and that these contracts are … by and against him.

Yet, certain categories of people have limited contractual ...

a) Minors/ …

Persons under the age of 18 have the right to … contracts. They are not bound by certain contracts and therefore … will not be awarded against them. On the contrary, a minor can … damages against an adult if the latter does not … his contractual obligations. So, a minor can …, but he cannot be sued.

b) … and drunken persons

A mental patient is not entitled to enter into contracts.

The contract is voidable if a person makes a contract while … insane or drunk. He has to prove that he was so insane or drunk at the time as to be incapable of understanding what he did, and the other party knew this.

Word study

agreement s. (abr. agt) înțelegere, acord
avoid v.t. a desființa, a anula, a aboli
bargain s. afacere, tranzacție, contract
capacity s. capacitate juridică, competență legală, calitate juridică
to comply v.t. a consimți, a încuviința
to comply with v.i. a se conforma
to conclude v.t.. a hotărî, a decide, a încheia (un contract)
consideration s. 1. cauză a unui act juridic, motiv, considerent; 2. preț; promisiunea de a plăti prețul
contract I *v.t.* a încheia un contract, a contracta o obligație; II *s.* contract, convenție, acord, învoială
enforceable adj. executoriu, opozabil
inherent adj. inerent, specific
to set forth v.t. a specifica, a menționa într-un contract
regulatory framework = cadru normativ
requirement s. = condiţie
mutual agreement = acord de voinţă
binding adj. = obligatoriu
expressly adv. = expres
impliedly adv. = tacit
termination s. = încetare (a unui contract)
deed s. = act autentic, înscris, document
forbearance s. = abţinere, reţinere
bill of sale = act/contract de vânzare
mortgage s. = gaj, ipotecă, garanţie reală

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void adj. = nul
conveyance s. = transfer de proprietate
bill of exchange = cambie, trată
cheque s. = cec
promissory note = bilet la ordin
assignment of debt = cesiune de creanţă
defect s. = defect, viciu
mistake of fact = eroare de fapt
mistake of law = eroare de drept
mistaken identity = eroare asupra persoanei
to set aside v.t. = a anula
misrepresentation s. = falsă declaraţie, înşelăciune, viciu de consimţământ la încheierea unui contract (denaturarea faptelor care determină una din părţi să semneze contractul)
duress s. = violenţă, ameninţare, constrângere, presiune
undue influence = traffic de influenţă, influenţă necuvenită *(consimţământul unei personae nu este valabil dacă cealaltă parte a exercitat o influenţă necuvenită asupra sa)*
defective adj. = viciat
unenforceable adj. = inopozabil
voidable adj. = anulabil
to sue v.t. = a acţiona în judecată
rescission s. = rezoluţiune
coercion s. = constrângere
to deem v.t. = a considera
to recover v.t. = a recupera
insane adj. = nebun, alienat mintal

11.2. Match the following words and expressions to their definitions:

1. breach of contract
2. claimant
3. defendant

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4. assignee/delegate
5. fraud in the inducement
6. default
7. severability
8. 'evergreen clauses'
9. general/actual damages
10. liquidated/stipulated damages
11. expectation damages/'benefit of the bargain' damages
12. reliance damages
13. restitution damages
14. special/consequential damages
15. punitive/exemplary damages

a) Damages awarded for losses suffered in reasonable reliance on a promise;
b) A third party to which an original party to a contract may transfer his rights or duties under the contract by way of an assignment of rights or delegation of duties;
c) They are given for losses that the law will presume are the natural and probable consequence of a wrong;
d) Damages awarded in a lawsuit when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, or grossly reckless;
e) Failure to do something required by law;
f) They are awarded in order to place the harmed party in the position he would have been in if the breach had not occurred;
g) They cause a contract to automatically renew for a specified period of time;
h) It arises when one party alleges that another party to an agreement has failed to comply with the terms of the agreement;
i) When one party is fraudulently led to enter into a contract (i.e. he is intentionally misled about the contractual terms);

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j) A sum fixed in advance by the parties at the time they enter into the contract, which shall be awarded in the event of a breach;
k) The party commencing a breach of contract claim;
l) They are given for losses that are not presumed, but have been specifically proved;
m) The party the the claim is brought against;
n) It refers to a clause providing that if a term in the contract is deemed unenforceable by a court, the contract as a whole will not be deemed unenforceable;
o) Damages awarded to a claimant when the defendant has been unjustly enriched at the claimant's expense.

11.3. True or false?

1. The presumption that business agreements are intended by the parties to create legal relations can be rebutted, on condition that there is strong evidence, such as a clear statement in a written contract.
2. There is no difference between the situation where the parties have reached a firm agreement and the situation where they are still negotiating.
3. Bills of exchange must be in writing, but not necessarily by deed.
4. Certain transactions are valid only if effected in writing, such as promissory notes, contracts for the sale of interests in land, and guarantees that can at law only be enforced if evidenced in writing.
5. The transfer of shares in British ships must not be completed by deed.
6. A voidable contract is deemed never to have existed at all.
7. The remedy of rescission refers to the right to have the contract set aside if one party so wishes.

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8. In general, a mistake made by one or both parties in making the contract has no effect on the validity of the contract.
9. Acts carried out under duress usually legal effect.
10. Undue influence is the influence preventing someone from exercising an independent judgment with regard to any transactions.

11.4. Choose the right answer(s):

1. The law of contract is:
a) an area of civil law;
b) concerned with legal rights and remedies resulting from agreements;
c) an offer and a counter offer.

2. The terms of a contract may be:
a) express;
b) implied;
c) express or implied.

3. The English law will recognize the contracts which have the following features:
a) intention to create legal relations;
b) agreement, the written form being the only valid form of agreement;
c) consideration, which appears as something given, promised or done in exchange.

4. The English law of contract will only recognize:
a) a mere promise;
b) a bargain;
c) an offer.

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5. The common remedy which the court may order for breach of contract is:
a) damage;
b) damages;
c) an injunction.

6. The following are void unless in the form of a deed:
a) conveyances of land;
b) mortgages of goods;
c) cheques and promissory notes.

7. Misrepresentation is:
a) a false statement of fact;
b) a false statement of law;
c) intended to induce the other party to make the agreement.

8. The exercise of undue influence:
a) must normally be proved negatively;
b) must prove that there is a transaction in which an unfair advantage has been taken of another person;
c) implies actual or threatened physical force put on a person to act in a particular way.

Reading

The Sale(s) Contract

Useful sentences in drawing up a CONTRACT

1. Contract no…concluded on the date of …between …, hereinafter called/ referred to as the "Seller", represented by ...and ..., hereinafter called/ referred to as the "Buyer", represented by ... (Contract nr... încheiat la data de … între …, menționat mai jos drept "Vânzător", reprezentat de …și …, menționat mai jos drept "Cumpărător", reprezentat de …)

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2. Long-term contract (contract de lungă durată/ pe termen lung)
3. Frame contract (contract cadru)
4. ...have agreed the following:... (au convenit/au căzut de acord asupra următoarelor…)
5. ...have concluded the present contract as follows/ whereby it is agreed as follows/ on the effect that ... (...au încheiat prezentul contract după cum urmează/ prin care se cade de acord/ în sensul că …)
6. The Seller has sold and the Buyer has bought ...the following goods: ... (Vânzătorul a vândut și Cumpărătorul a cumpărat... următoarele mărfuri:...)
7. On the terms and conditions set forth and subject to the general conditions of sale endorsed hereon... (în termenii și condițiile stipulate și sub rezerva condițiilor generale de vânzare confirmate aici...)
8. The Seller undertakes to deliver and the Buyer will take over and pay according to the conditions of this/ the present contract ... (Vânzătorul se obligă să livreze și Cumpărătorul să preia și să plătească, în conformitate cu condițiile acestui/ prezentului contract ...)
9. The total value of this contract is ... (Valoarea totală a acestui contract este ...)
10. The object of this contract can be enlarged or restricted during its validity by mutual written consent of the parties (obiectul acestui contract poate fi extins sau restrâns pe toată durata sa, prin acordul reciproc al părților, exprimat în scris)
11. This contract may be terminated (Acest contract poate înceta):
    - by mutual consent at any time (prin acordul reciproc al părților în orice moment)

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- by either party at any time by ... days notice in writing (din inițiativa oricărei părți, în orice moment, cu o prealabilă notificare de ... zile, exprimată în scris)

12. in the event of the persistent failure of the other party to observe the terms of this contract unless such failure arises from force majeure (în cazul nerespectării/ neexecutării condițiilor/ obligațiilor stipulate în acest contract, cu excepția cazurilor de forță majoră)
13. The goods should be taken in charge by the Buyer (mărfurile trebuie preluate de Cumpărător)
14. The goods making the object of this present contract (marfa ce reprezintă obiectul prezentului contract)
15. The Buyer is held responsible for any damage arising from non-observance of this obligation/ from non-observing this obligation (Cumpărătorul este ținut resposabil pentru orice daune produse prin neexecutarea acestei obligații)
16. Description of goods (descrierea mărfii)
17. The **quality** is attested by the Certificate of quality issued by the producers (Caliatatea este atestată prin Certificatul de calitate emis de producători)
18. Tel quel/as the goods stand (după cum se prezintă marfa)
19. Subject to inspection (cu condiția inspectării mărfii)
20. On approval (cu condiția aprobării)
21. On trial (de probă)
22. Damaged goods (Marfă deteriorată)
23. The goods sold under the present contract shall be of the following specifications:... (Marfa vândută conform prezentului contract trebuie să corespundă următoarelor date:...)

24. The quality of the goods under the present contract shall be in full conformity with the State standards (Calitatea mărfii din prezentul contract trebuie să fie în deplină conformitate cu standardele de Stat)
25. Goods have to meet the standards of ... (Marfa trebuie să corespundă standardelor din ...)
26. A margin of 5 per cent more or less on the contract **quantity** is to be allowed to the Sellers (O toleranță de 5% în plus sau în minus față de cantitatea prevăzută în contract se admite vânzătorului)
27. To save freight, to keep freight low (a menține costul scăzut)
28. Ad valorem duty (taxe vamale în funcție de valoarea mărfii)
29. Should the quantity supplied exceed the contract quantity plus the allowed margin, Buyers are entitled to accept the whole quantity supplied, paying the contract price (În cazul în care cantitatea livrată depășește cantitatea contractului plus toleranța admisă, Cumpărătorul are dreptul/ poate să accepte întreaga cantitate livrată, plătind prețul din contract)
30. The Seller undertakes to pack the goods in adequate/ appropriate packing materials suitable to the means of transportation (Vânzătorul se angajează să ambaleze mărfurile în materiale de ambalaj adecvate corespunzător mijloacelor de transport)
31. To ensure the integrity of the goods to be shipped and transshipped (a asigura integritatea mărfurilor ce urmează a fi expediate și transbordate)
32. Shipping marks (marcaje de expediere)
33. Net and gross weight (greutate netă și brută)
34. Duty paid (vămuit); duty unpaid (nevămuit)

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35. Freight, charges and expenses prepaid (cu taxele și cheltuielile de transport plătite)
36. To calculate the unit prices of the goods (a stabili prețurile unitare ale mărfurilor)
37. Any increase in the transport charges shall entail a proportional rise in the price of the goods (Orice creștere a cheltuielilor de transport va majora corespunzător prețul mărfurilor)
38. To extend the time of delivery (a prelungi termenul de livrare); to postpone delivery (a amâna termenul de livrare)
39. Division of costs (repartizarea cheltuielilor)
40. For the documentation dispatched by mail, the date of delivery is deemed to be the date of its receipt by ... (Pentru documentația expediată prin poștă, data livrării se consideră a fi data primirii ei de către ...)
41. Payment to be made (Plata se va face):
    - in cash against first presentation of documents (în numerar contra primei prezentări a documentelor)
    - by sight drafts (prin trate la vedere)
    - by 90 days' time drafts (print trate la termen de 90 de zile)
    - by cash with order (în numerar la momentul când se dă comanda)
    - by irrevocable letter of credit (prin acreditiv documentar irevocabil)
    - in/ by installments (în rate)
42. The products accepted cannot be any more claimed by the Buyers for shortages, except for the hidden faults which appeared within the time granted for claims (Produsele acceptate nu mai pot fi reclamate de cumpărător pentru lipsuri cantitative, exceptând viciile ascunse care au apărut în decursul termenului admis pentru reclamație)

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11.5. Translate into English:

a) 1. obligaţiile cumpărătorului; 2. obligaţiile vânzătorului; 3. taxe şi impozite; 4. condiţii de plată; 5. garanţii bancare; 6. condiţii de livrare; 7. termene de livrare; 8. ambalare, marcare; 9. expediere şi transport; 10. recepţia mărfii şi reclamaţii; 11. recepţia obiectului contractului; 12. penalizări; 13. despăgubiri; 14. bonificaţii; 15. forţă majoră; 16. protecţie faţă de terţi; 17. păstrarea secretului; 18. dispoziţii finale.

b) 1. În cazul în care părţile contractante nu pot realiza un acord scris în termen de 30 de zile de la data la care vânzătorul a cerut revizuirea preţurilor, vânzătorul are dreptul să denunţe contractul.
2. Preţul stabilit prin prezentul contract este ferm şi nu poate suferi nicio modificare în decurs de 1 an de la încheierea contractului.
3. Marfa va fi livrată în perioada stabilită în specificaţiile convenite de către părţile contractante.
4. Expedierea mărfii urmează să se efectueze într-un singur transport în decurs de 3 luni de la intrarea în vigoare a contractului.
5. În clauza referitoare la asigurare se specifică faptul că bunurile contractuale sunt asigurate până la livrare.

11.6. Answer the following questions:

1. What is a contract?
2. Which are the basic requirements for the validity of contracts?
3. Explain the role of mutual agreement in the conclusion of a contract.
4. Define consideration.

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5. Does the form in which a contract is made have any effect upon the validity of a contract? Exceptions.
6. Which is the role of intention in the creation of legal relations?
7. How can a contract be discharged?
8. Explain the distinction between void, voidable and enforceable contracts.
9. Which are the factors rendering a contract invalid?
10. Mistake of law v. mistake of fact.
11. What does the remedy of rescission refer to?
12. What is misrepresentation?
13. Explain the notion of duress.
14. Which are the circumstances of undue influence?
15. Remedies in case of a breach of contract.

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UNIT 12

FAMILY LAW

Learning objectives:

In this unit, you will:

- acquire the basic vocabulary related to family law (marriage, divorce, etc.)
- discover the Romanian equivalents of the relevant family law terms
- practise the vocabulary by completing various exercises
- develop translation and communication skills

12.1. Translate into Romanian:

- spouse, male and female, husband and wife, parties to the marriage
- parental consent, in-laws
- affines
- registrar
- validity of marriage
- to annul a marriage, grounds for annulment, void marriage
- non-compliance with formalities
- reasonable grounds, incapacity to consummate, wilful refusal to consummate, lack of consent, venereal disease, mental illness
- to terminate a marriage, petitioner, respondent, evidence filed by the petitioner, irretrievable

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breakdown, to commit adultery, pregnancy by third party, to desert one's spouse
- acrimonious proceedings
- to grant a divorce, to grant a decree
- pension splitting and earmarking

12.2. Translate into English:

- iremediabil
- amiabil
- viață în comun; a trăi separat; durata separării
- a renunța la o cerință
- soțul părăsit; soțul care și-a părăsit căminul
- a stabili faptele în vederea divorțului
- a dizolva căsătoria
- întârziere în procesul de divorț
- persoană divorțată

Reading

Marriage and Divorce

Although family life is considered by most people a private matter, the law is involved in every aspect of family life (marriage, birth, death, divorce etc).

Family law can be defined as the body of law dealing with marriage, divorce, adoption, child custody and support, and other domestic-relations issues (*Black's Law Dictionary*).

Translate into English the following definition of family law:

Dreptul familiei reprezintă totalitatea normelor juridice care reglementează raporturile personale și patrimoniale ce

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izvorăsc din căsătorie, rudenie și celelalte raporturi asimilate de lege cu raportul de familie.

Marriage

Marriage appears as a contract - creating legal rights and duties - between two persons who agree to live as husband and wife.

Anyone who intends to get married must meet certain legal requirements.

Although in the USA marriage laws vary from state to state, the following common requirements must be met:

1. Age

In order to be allowed by the law to get married, females must be 16 and males 18. In some states younger couples may marry if their parents consent or if the female is pregnant.

2. Relationship

Every state forbids marriage between close relatives, many states also prohibiting marriages between first cousins.

3. Two people

Marriage is a relationship between a man and a woman. Bigamy is illegal.

4. Consent

Marriage has a consensual nature. Both parties must give their consent freely.

Steps to get married

Match the following steps to get married with their description:

1. Blood test
2. Marriage license
3. Waiting period
4. Wedding ceremony

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a. It helps ensure that people are serious about marriage. For instance, it can prevent someone to get married while intoxicated.
b. Most states require it for VD before getting married. A few states also require a physical examination.
c. It can be either religious or civil for a valid marriage.
d. In order to apply for it, the couple will have to provide certain information, such as proof of age and a copy of their blood test results, to swear to the truth of this information and to pay a small fee.

Marriage License Application in the USA

APPLICATION FOR A MARRIAGE LICENSE

TO THE CLERK OF THE CIRCUIT COURT:

I hereby make application for Marriage License, to be issued in accordance with the Laws of this state, under penalties of perjury, the following statement, to wit:

Male's Name…	Female's Name…
Age…	Age…
Date of Birth…	Date of Birth…
Birthplace…	Birthplace…
Residence…	Residence…
Marital Status:	Marital Status:
Single…	Single…
Widowed…	Widowed…
Divorced…	Divorced…

(If previously married list exact the date of death and place or exact date of divorce decree and where granted for all previous marriages)

Relationship, if any…

Signature of person consenting if female is a minor

… (Parent or guardian)

… (Applicant)

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Sworn to and subscribed before me this…day of…A.D., 20…

Check here if License is to be mailed: …

To one of the contracting parties

To the Minister of the Gospel
(Give the name and mailing address)

Clerk of the Court or other Comparable Official
County of …
State of …
(Give complete address and affix Court Seal)

Divorce

Under the Matrimonial Causes Act 1973 (UK), there is only one ground for divorce: the petitioner must establish that the marriage has irretrievably broken down, but the court cannot grant a divorce unless the petitioner also proves one of the five facts, as referred to in the M.C.A., s.1(2). The five facts are:

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with him;
(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him;
(c) that the respondent has deserted the petitioner for a period of at least two years immediately preceding the presentation of the petition;
(d) that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted; and
(e) that the parties have lived apart for a period of at least five years immediately preceding the presentation of the petition.

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No petition for divorce can be filed until the parties have been married for one year. This is an absolute bar to divorce, the court having no discretion to waive this requirement.

Delays in the divorce process can occur for various reasons:

- inertia
- lack of co-operation on the part of one of the parties
- the work load of the petitioner's solicitor

A decree is "1. a judicial decision in a court of equity, admiralty, divorce, or probate – similar to a judgment of a court of law; 2. any court order, but especially one in a matrimonial case." (*Black's Law Dictionary*)

Nullity

The nullity of a marriage is different from the termination of it. Yet, a decree of nullity ends the marriage in the same way as divorce, the parties having the freedom to marry thereafter.

Section 12 of the M.C.A. presents the six grounds on which a marriage can be declared voidable (*Translate the six reasons into English*):

(a) căsătoria nu este consumată datorită incapacității uneia dintre părți;
(b) căsătoria nu este consumată datorită refuzului pârâtului;
(c) lipsa consimțământului valabil la căsătorie al oricăreia dintre părți;
(d) oricare dintre părți suferea de afecțiuni psihice;
(e) pârâtul suferea de o boală venerică într-o formă comunicabilă la momentul căsătoriei; și
(f) pârâta era însărcinată cu copilul altui bărbat decât reclamantul la momentul încheierii căsătoriei.

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Word study

to meet the legal requirements = a îndeplini condiţiile legale
to consent v.i. = a consimţi
pregnant adj. = însărcinată
to forbid v.t. = a interzice
close relatives = rude apropiate
to prohibit v.t. = a intezice
intoxicated adj. = beat, în stare de ebrietate
VD (venereal disease) = boală venerică
proof s. = dovadă
fee s. = taxă
guardian s. = tutore
ground s. = motiv
petitioner s. = reclamant
irretrievably adv. = iremediabil
respondent s. = pârât
decree s. = hotărâre de divorţ
to waive v.t. = a renunţa
termination s. = încetare

12.3. Translate into English:

1. Căsătoria este nulă dacă părţile nu au vârsta legală.
2. Unele state permit căsătoria sub vârsta minimă legală dacă femeia este însărcinată.
3. În dreptul englez, dacă o persoană cu vârsta sub 18 ani dorește să se căsătorească, trebuie să ceară consimțământul părinților.
4. Cât timp oricare dintre părţi are vârsta de cel puţin 16 ani, lipsa consimţământului părinţilor nu invalidează în mod necesar căsătoria.
5. Divorțul pune capăt unei relații legale. După divorţ, nicio parte nu mai are drepturile sau obligațiile legale ce decurg din căsătorie.

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6. Părţile locuiesc separat de doi ani.
7. Relaţia de afinitate, diferită de cea de consangvinitate, este rudenia prin căsătorie şi reprezintă relaţia pe care fiecare parte la căsătorie o are cu rudele celeilate părţi.

12.4. Answer the following questions :

1. Define family law.
2. Could marriage be considered a contract?
3. Which are the common requirements for marriage in the USA?
4. Which are the steps to get married in the USA?
5. What does VD refer to?
6. Which are the grounds for divorce under MCA 1973?
7. How many facts must the petitioner prove so that the court may grant a divorce?
8. What is a decree?
9. Nullity of a marriage v. termination of it.
10. On which grounds can a marriage be declared voidable?

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UNIT 13

SUCCESSION

Learning objectives:

In this unit, you will:

- identify the vocabulary related to the law of succession (testate succession, intestate succession, requirements for a valid will, alteration or revocation of a will, distribution of property, etc.)
- discover the Romanian equivalents of the relevant succession law terms
- practise the specialist vocabulary by completing various exercises
- enhance translation and communication skills
- develop capacity to draw a comparison between two legal systems

Reading

Testate succession v. intestate succession

Succession consists of the transfer of property upon death, particularly through disposition by will (testate succession) and succession on intestacy (intestate succession).

Testate succession

What is a will?

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A **will** is a document in which a person called the **testator** (from the Latin *testamentum* meaning a will) states who is to succeed to his property after his death. The person to whom the property was left is called the **beneficiary**.

A will may also include other legally binding instructions such as the appointment of executors or of guardians for children.

The will takes effect upon death and it may be revoked completely or partially until that moment.

In case the beneficiary dies before the testator, the gift to him normally lapses, the property going to whoever is entitled to the residue of the estate. As an exception, the property will go to whoever was entitled under the beneficiary's will or intestacy if the dead beneficiary was a child of the testator and left children or grandchildren were alive at the testator's death.

According to the *commorientes* rule, if two people die together and there is doubt about who died first, the younger is presumed to have survived the elder.

Requirements for a valid will

The requirements for a valid will are contained in the Wills Act 1837, as subsequently amended:

1. *Written form.* A will must be *in writing.* The material on which the testator writes is not important as long as the writing is clear.
2. *Signature.* The will must be signed by the testator or acknowledged by some mark. If he is unable to do it, the will may be signed by some other person in his presence and by his direction. Anything added below the signature, which must be 'at the foot or end thereof', is of no effect.
3. *Witnesses.* The number of witnesses that must be present together when the testator signs or acknowledges his signature, is two.

The testator must have testamentary capacity, be over the age of 18, of sound mind, and not influenced by coercion or fraud.

The formal requirements for the execution of a valid will do not apply to members of the forces on active military service or to mariners at sea. If such a person is 14 and clearly indicates, even orally, his wishes regarding the disposal of his property after death, this statement is valid and such an informal will remains valid after return to civilian life.

Alteration or revocation of a will

The testator has the right to alter a will by the addition, for instance, of a clause to the will. This supplement or postscript is called a *codicil* and it must be signed and witnessed in the same way as the will itself.

As for revocation, there are several ways by which a will may be revoked.

Discover these ways by filling in the blank spaces with the following words and expressions:

subsequent, clause, testator, previous, revocation, destruction, earlier, express

1. *Express* .... A will may be revoked by an ... statement to this effect, properly executed and attested, e.g. a letter, signed by the testator and attested by two witnesses, requesting the addressee to destroy the will.
2. *Implied revocation by a new will.* A new will impliedly revokes an ... will even if it does not contain an express revocation .... In case the later will is revoked too, the earlier one is not revived.

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3. ... *with intent to revoke.* The ... may destroy the will or may have someone destroy it in his presence or at his request with intent to revoke it. If the destruction is accidental, the will stands.
4. ... *marriage.* If the testator marries, all ... wills are revoked. A will survives the marriage only if the future spouse is referred to expressly.

Intestate succession

The Administration of Estates Act 1925, as subsequently amended, presents the distribution of property when a person dies intestate, i.e. without making a valid will. The distribution is carried out according to the intestacy rules after the property passes upon trust for sale to the personal representatives who are charged with payment of all debts and expenses.

When a person dies without leaving a valid will, there are several reasons for this situation.

Insert the following words into the blank spaces in order to find out these reasons:

capacity, testator, revoked, will, execution, sole, invalid

a. the deceased never made a ...;
b. the deceased made a will, but it is ... owing to lack of ...or defective ...;
c. the deceased made a will, but it was ...;
d. the deceased made a will which attempted, but wholly failed to dispose of his or her property, for example when the ... beneficiary predeceased the ...;
e. the deceased made a will which contained no disposition of his or her property.

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Distribution of property

The *surviving husband or wife* is entitled to all personal goods such as clothing, jewellery, furniture, but not houses, money, or business effects.

The *commorientes* rule is excluded by statute in so far as intestacies are concerned. If the testator and a younger spouse die together and it is uncertain who died first, there is a presumption that the spouse did not survive the intestate.

Children of the deceased, including adopted and illegitimate children, will ultimately succeed to the estate in equal shares, subject to any life interest of the spouse.

Word study

succession s. = succesiune, descendenţă, moştenire
testate succession = moştenire prin testament
intestate succession/ intestacy = succesiune ab intestat/legală/fără testament
will s. = testament
appointment s. = numire
executor s. = executor
guardian s. = tutore, custode
issue = descendenţi
to take effect = a produce efecte (juridice)
to revoke v.t. = a revoca
to lapse v.i. = a nu mai fi valabil
residue s. = activ succesoral, moştenire reziduală, parte din moştenire rămasă după plata taxelor, datoriilor şi a altor sarcini
commorientes (Lat.) = persoane care au decedat în acelaşi timp şi în aceeaşi împrejurare, comorienţi
subsequently adv. = ulterior
to acknowledge v.t. = a recunoaşte
thereof adv. = din aceasta

witness s. = martor
sound mind = în deplinătatea facultăţilor mintale
coercion s. = constrângere
fraud s. = fraudă, înşelătorie
to alter v.t. = a modifica
alteration s. = modificare
revocation s. = revocare
codicil s. = codicil
distribution s. = împărţire
trust s. = administrare

13.1. True or false?

1. Testate succession refers to the state in which a person dies without having made a will disposing of all his property.
2. The property when a person dies intestate is distributed under the intestacy rules.
3. Testate succession arises where the deceased person has expressed his wishes regarding the devolution of his property during his lifetime, in the form of a will.
4. As a general requirement, a will must be in either written or oral form as long as it expresses the testator's wishes concerning the disposal of his property after death.
5. In addition to disposing of property, a will may include such instructions as the appointment of executors or of guardians for children.
6. The will takes effect at the time it is made.
7. A will may be revoked either completely or partially.
8. No will shall be valid unless it appears that the testator intended by his signature to give effect to the will.
9. According to the commorientes rule, if two people die together and it is not certain who died first, the younger is presumed to have survived the elder.

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10. A partial intestacy can arise where the testator's will does not dispose of all of his property.

13.2. Choose the right answer(s):

1. If the person to whom property was left dies before the testator, the gift to him normally …, and the property so given falls into …
a) passes, reserve;
b) lapses, residue;
c) leaps, residue.

2. The formalities required for the execution of a valid will are:
a) writing, signature, witnesses;
b) writing, seal, witnesses;
c) deed, signature, witnesses.

3. A codicil:
a) is a document supplementary to a will;
b) is executed with different formalities;
c) adds to, varies, or revokes provisions in the will.

4. A will may be revoked by:
a) subsequent will or codicil;
b) a writing which, though not a will itself, is signed and attested and shows a clear intention to revoke all former wills;
c) destruction or subsequent marriage.

13.3. Fill in the blank spaces with the given words:
litigation, informal, transferee, transferor, public, devolution, statement, home-made, standard, actual, age, drafting

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Whenever one person transfers property to another, the ... may be said to 'succeed' to the title of the ...

A will is a declaration made by a person in his lifetime of his wishes concerning the ... of his property after his death. ... wills, even on the ... will forms on sale to the general ..., often contain ... errors which may give rise to costly ...

Soldiers, sailors and airmen while in ... military service and seamen at sea may make wills even if they are not of ..., on condition that they have attained the age of 14 years. They may make ... wills. Even an oral declaration will suffice provided that it is a serious ... of intention.

13.4. Translate into English:

a) 1. S-a reținut că proprietatea lui *de cujus* trebuie să fie împărțită conform regulilor moștenirii legale.
2. Descendenții defunctului îi includ și pe cei nenăscuți, pe lângă copii, nepoți și descendenți mai îndepărtați.
3. Bunurile sunt împărțite între descendenți pe ramuri, fiecare având dreptul la o cotă egală.
4. Distrugerea unui testament cu intenția de a revoca poate include arderea, ruperea sau alte feluri de distrugere.
b) Dreptul de opţiune poate fi exercitat de:
- moştenitorii rezervatari
- succesibilii moştenitorilor rezervatari în cazul în care aceştia mor fără a-şi fi exercitat dreptul de opţiune, întrucât acest drept este un drept personal patrimonial.
c) Raportul donaţiilor este obligaţia pe care o are – sub condiţia de a fi acceptat succesiunea, chiar sub beneficiu de inventar – orice moştenitor aparţinând clasei descendenţilor, precum şi soţul supravieţuitor în concurs cu descendenţii, de a raporta, adică de a da înapoi moştenirii tot ceea cea a primit cu titlu de donaţie de la defunct, cu excepţia cazului în care donatorul l-a scutit de această obligaţie.

d) Au capacitate succesorală următoarele categorii de persoane:
- persoanele fizice în viaţă la data morţii lui *de cujus*
- persoanele dipărute
- persoanele concepute, dar nenăscute la data deschiderii succesiunii
- persoanele juridice în fiinţă la data deschiderii succesiunii.

13.5. Answer the following questions:

1. Define succession.
2. Testate v. intestate succession.
3. What is a will?
4. What is a codicil?
5. Which are the requirements for a valid will?
6. Soldiers' wills.
7. Explain the *commorientes* rule. Is it valid in so far as intestacies are concerned?
8. How can a will be revoked ?
9. Dying without making a valid will. Reasons.
10. In case of distribution of property, what is the surviving spouse entitled to?

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UNIT 14

EMPLOYMENT LAW

Learning objectives:

In this unit, you will:

- become familiar with the vocabulary related to employment law (the employment relationship, duties of employees/employers, employment protection, redundancy, individual employment agreement – sample)
- discover the Romanian equivalents of the basic employment law terms
- practise the vocabulary by completing various exercises
- develop translation and communication skills

14.1. Match each word to its meaning:

1) dismissal
2) redundancy
3) demotion
4) employee
5) notice
6) warning
7) severance

a) a formal letter or statement saying that you will or must leave your job at the end of a particular period of time;
b) a person who is paid to work for somebody;

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c) the situation when someone has to leave his/her job because there is no more work available for him/her;
d) the act of moving somebody to a lower position or rank, often as a punishment;
e) the act of ending somebody's contract of employment.
f) the act of officially removing somebody from their job;
g) a statement telling somebody that they will be punished if they continue to behave in a particular way.

Reading

The Employment Relationship

1. The employment relationship

The employment relationship is established when one person (an employee, worker etc.) supplies his skill and labour to another (commonly the employer) in return for payment.

This kind of relationship is complex. For instance, someone can be employed in a company and can own shares in this company at the same time.

In the case of an independent contractor (such as a plumber or joiner who contracts only for one particular job), the situation is different.

Therefore, courts have developed various tests in order to distinguish employees from independent contractors. Such tests include: the degree of control exercised by the employer, the degree of integration of the workman into the employer's organization, the economic reality of the position.

The distinction between employees and contractors is important from several perspectives: social security and taxation provisions differ for the two categories, employees can have statutory protections against unfair dismissal and redundancy.

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The employment relationship is a contract, and the terms are agreed either expressly or impliedly.

The terms may be subject to change in some jobs, and the changes come about as a result of collective agreements between employers and trade unions.

2. Duties of employees

An employee owes the duties expressly agreed, which usually cover the work to be done, the hours of attendance etc. Serious and repeated breach of implied terms entitle the employer to dismiss the employee without notice.

1. An employee must show a reasonable level of competence.
2. He must obey reasonable instructions.
3. Employees owe a duty to take reasonable care.
4. Employees owe a general duty of good faith regarding trade secrets, confidential information acquired from the employment.
5. Another duty owed by an employee is the duty of honesty.
6. Duty of reasonable and sensible behaviour.

Misconduct (seen as misbehaviour contrary to the position held and appropriate carrying out of the worker's duty etc.) can include: immorality, drunkenness, physical attack on a colleague or superior.

Duties of employers

In order to discover some of the most important duties of employers, fill in the blank spaces with the given words:

safe, liable, reference, incurred, indemnify, wages, negligence, employees

1. The main duty is to pay the agreed ....
2. A common-law duty to provide a reasonably ... system of work.

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3. Duty to act reasonably and responsibly towards their ...
4. The employer must generally ... employees against expenses reasonably and necessarily ... by the latter in the performance of their duties.
5. An employer does not have the obligation to give a ... to his employee. But in case he does so, he must be careful and accurate since otherwise he might be ... for defamation to his former employee or for ... to the new employer.

1. Employment protection

Statutory protections are generally available to those persons who have first completed a qualifying period of continuous employment with their present employer.

Under the Employment Protection (Consolidation) Act, Part IV, both the employee and the employer have the right to notice.

The employer is entitled to at least one week's notice (which is the maximum statutory notice that the employee need give) from the worker after employment for one month.

As for employees, they must be given at least one week's notice if they have been continuously employed with the present employer for at least one month. There is a sliding scale thereafter implying that after two years with the same employer, an employee has the right to at least two weeks and, thenceforth, at least one week's notice for each year of continuous employment up to a maximum of 12 weeks' notice.

The individual contract of employment can provide for longer notice, but never less.

Employees are also protected against unfair dismissal.

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Redundancy

In order to claim a redundancy payment from the employer one must have been dismissed "by reason of redundancy". In some cases, disputes arise as to whether someone has been dismissed or left of their own volition, and, if they have been dismissed, if this was because they were being made redundant.

The law says that an employee is dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

- the fact that his employer has ceased, or intends to cease (i) to carry on the business for the purposes of which the employee was employed by him, or (ii) to carry on that business in the place where the employee was so employed; or
- the fact that the requirements of the business (i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.

More explicitly, an employee is redundant if the whole business closes down, or if there is no longer a need for a type of worker of the employee's kind.

In order to qualify for a redundancy payment, the dismissed employee must have been continuously employed by the employer for at least two years at the date of the dismissal. There is no lower age limit to be entitled to redundancy payments.

There are certain categories of workers who are specifically excluded from making a claim. Discover these categories by filling in the blank spaces with the following words:

share, misconduct, public, redundant, suitable, foreign, redundancy, fixed-term

- Employees dismissed for ...
- ... employees who refuse ... alternative employment
- ... contract workers of more than 2 years who have renounced their ... rights
- ... fishermen, people ordinarily working abroad, employees of ... governments, civil servants and certain ... officials

Word study

to employ v.t. = a angaja
employment law/labour law = dreptul muncii
employer s. = angajator, patron
employee s. = angajat
dismissal s. = concediere
unfair dismissal = concediere ilegală
redundancy s. = excedent de forţă de muncă, reorganizare a activităţii unei societăţi, disponibilizare
demotion s. = retrogradare
notice s. = înştiinţare, preaviz
warning s. = avertisment
severance s. = concediere, disponibilizare
severance pay = salariu compensatoriu
share s. = acţiune
plumber s. = instalator
joiner s. = tâmplar
collective agreement = contract colectiv
breach s. = încălcare
to entitle v.t. = a îndreptăţi, a da dreptul
misconduct s. = comportament necorespunzător, abatere disciplinară
wage s. = salariu

to indemnify v.t. = a despăgubi, a acorda o primă
to incur v.t. = a-şi atrage, a-şi asuma
reference s. = referinţă
right to notice s. = dreptul la preaviz
thenceforth adv. = de atunci încolo

14.2. Below is a letter of redundancy, but the sentences have been mixed up. Put them into order:

1. Finally, I assure you that I would be pleased to supply any prospective employer with a reference on your behalf.
2. Details of your forthcoming redundancy and severance pay are enclosed.
3. I am writing in connection with your current position within the company.
4. Dear Mr Smith,
5. If you need any assistance in obtaining alternative employment, please do not hesitate to contact the Personnel Department.
6. Yours sincerely,
   Mary Hopkins
   Personnel Manager
7. It is with much regret that I must ask you to accept this letter as formal notice of the redundancy of your position as an administrative assistant with effect from 1 October 2012.
8. On behalf of the Company, I would like to thank you for the services you have given us so far.
9. The Company will gladly grant you reasonable time off with pay so that you can attend job interviews or undertake any training for alternative employment.

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14.3. Fill in the blank spaces with the given words: *delay, entitled, payment, claim, discretion, Tribunal, award, within, redundancy*

If you believe you are ... to a redundancy ... you should make a ... in writing to your employer or to an Employment ... ... 6 months of your ... otherwise your claim may be lost. If you ... beyond this time limit, but make a claim within the next 6 months, the Employment Tribunal can consider your claim, but any ... is at the Tribunal's ...

14.4. Use words from the following conversations and text, in order to fill in the blank spaces:

Conversation one:
A: What can I ask the job candidates coming today? I have to find out if they have the right qualifications.
B: The questions should relate directly to the job they will do.

Conversation two:
A: I think I have been discriminated against during my job interview. Is it normal to be asked about one's religion or family?
B: Personal questions mustn't be asked in an interview. This means that your rights have been violated.

Text:
In the USA, the rights of workers in the workplace are protected by numerous laws which have been passed by the federal government. These laws cover hiring practices, dismissal, redundancy, minimum wage, work safety etc.
During an interview, a prospective employer cannot ask personal questions or any questions which do not relate to the

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applicant's qualifications for the job, but he can conduct a background check if the information he requires is strictly job related. He can also check an applicant's credit history if the applicant's personal finances are connected with the job (such as if the applicant will handle amounts sums of money). All the applicants should be asked the same questions. An ex-employer can provide only limited information on an ex-employee. As for pre-employment tests, they can be legal, including job-related intelligence and skills tests.

1. The government has ... laws covering a wide range of employment-related issues.
2. Laws ... the rights of workers in the workplace.
3. Workers have the ... to a safe workplace.
4. An employer must keep within the legal boundaries with regard to the ... of employees.
5. ... wage is the least possible wage.
6. Laws protect people from being asked personal questions in an ...
7. ... employers must not go beyond certain limits when interviewing.
8. Hiring ... have been changing in accordance with the dynamic social conditions in the USA.
9. The only questions that the employer can ask are about a person's ... for the job.
10. ... an interview is not an easy job for an employer.
11. Past employers should pay attention to what information they can ... on a past employee.
12. Any search for information on the part of the employer must be ... job related.
13. Many companies perform a background ... in order to get specialized information.
14. A finance check seems necessary when the job of the new employee involves ... large sums of money.

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15. People who think they have been ... on grounds of their race, sex or religious beliefs are entitles to sue their employers.

14.5. Translate into English:

a) grevă; 2. grevă scoțiană; 3. grevă patronală; 4. grevă de zel; 5. concediere abuzivă; 6. a concedia fără preaviz; 7. revendicare salarială; 8. sindicalist; 9. vechime în muncă; 10. contribuții pentru asigurările sociale; 11. plată compensatorie la concedierea pentru desființarea postului; 12. ajutor/ indemnizație de șomaj; 13. forță de muncă; 14. participare la profit; 15. repunere în drepturi.

b) 1. Diferite legi interzic discriminarea pe motive de sex, rasă, boală, orientare sexuală, religie, vârstă.
2. Contractul de muncă poate înceta în următoarele cazuri:
   a) decesul angajatului;
   b) nerespectarea în mod corespunzător de către angajat a îndatoririlor sale după notificare sau avertisment;
   c) din motive economice ce pot surveni pe durata acestui contract, și care nu pot fi controlate de către angajator, etc.
3. Contractul individual de muncă poate înceta atât pe durata, cât și la sfârșitul periodei de probă.
4. Grevele sau întreruperile de activitate ne-au obligat să amânăm sau să anulăm anumite livrări.
5. Ar fi preferabil ca acest litigiu să fie soluționat pe cale amiabilă/ nejurisdicțională.
6. - Când are patronul dreptul să concedieze un angajat fără preaviz? – Cu siguranță când are loc o încălcare a contractului.
7. Să sperăm că revendicările salariale vor avea succes, iar conducerea ne va acorda și bonuri de masă, prime de stimulare.

8. Dacă am fi constituit societatea în conformitate cu normele dreptului european, acum nu ar mai fi în lichidare.
9. Dacă nu veți plăti în termen de 15 zile, suntem nevoiți să începem procedurile legale pentru a recupera suma pe care ne-o datorați.
10. Tribunalele pentru rezolvarea conflictelor de muncă au competență în vederea soluționării majorității cauzelor ce privesc conflictele de muncă, precum concedierea abuzivă. Un tribunal pentru rezolvarea conflictelor de muncă este și locul de judecată al cererilor privind discriminarea la locul de muncă. De obicei este format din trei membri, anume un președinte și doi membri nespecialiști, care nu sunt juriști.
Atât reclamantul, cât și pârâtul au dreptul de a acționa în nume propriu sau de a fi reprezentați.
Dacă se dovedește că a avut loc o concediere abuzivă, există mai multe modalități de reparare a prejudiciului: despăgubiri pentru câștigurile pierdute și pentru pierderea altor beneficii (cum ar fi asigurarea de sănătate sau pensia), și repunerea în situația inițială.
Recursul împotriva unei decizii a Tribunalului trebuie depus la Curtea de Apel pentru rezolvarea conflictelor de muncă în termen de 42 de zile de la pronunțarea hotărârii Tribunalului.

c) CODUL MUNCII: TITLUL II - Contractul individual de muncă
CAPITOLUL 2 - Executarea contractului individual de muncă
Art. 39. [principalele drepturi şi obligaţii ale salariatului]
(1) Salariatul are, în principal, următoarele drepturi:
a) dreptul la salarizare pentru munca depusă;
b) dreptul la repaus zilnic şi săptămânal;
c) dreptul la concediu de odihnă anual;
d) dreptul la egalitate de şanse şi de tratament;
e) dreptul la demnitate în muncă;
f) dreptul la securitate şi sănătate în muncă;

g) dreptul la acces la formarea profesională;
h) dreptul la informare şi consultare;
i) dreptul de a lua parte la determinarea şi ameliorarea condiţiilor de muncă şi a mediului de muncă;
j) dreptul la protecţie în caz de concediere;
k) dreptul la negociere colectivă şi individuală;
l) dreptul de a participa la acţiuni colective;
m) dreptul de a constitui sau de a adera la un sindicat;
n) alte drepturi prevăzute de lege sau de contractele colective de muncă aplicabile.
(2) Salariatului îi revin, în principal, următoarele obligaţii:
a) obligaţia de a realiza norma de muncă sau, după caz, de a îndeplini atribuţiile ce îi revin conform fişei postului;
b) obligaţia de a respecta disciplina muncii;
c) obligaţia de a respecta prevederile cuprinse în regulamentul intern,în contractul colectiv de muncă aplicabil, precum şi în contractul individual de muncă (...);
Art. 40. [principalele drepturi şi obligaţii ale angajatorului]
(1) Angajatorul are, în principal, următoarele drepturi:
a) să stabilească organizarea şi funcţionarea unităţii;
b) să stabilească atribuţiile corespunzătoare fiecărui salariat, în condiţiile legii (...);
e) să constate săvârşirea abaterilor disciplinare şi să aplice sancţiunile corespunzătoare, potrivit legii, contractului colectiv de muncă aplicabil şi regulamentului intern (...);
(2) Angajatorului în revin, în principal, următoarele obligaţii:
(...)
e) să se consulte cu sindicatul sau, după caz, cu reprezentanţii salariaţilor în privinţa deciziilor susceptibile să afecteze substanţial drepturile şi interesele acestora (...);
i) să asigure confidentialitatea datelor cu caracter personal ale salariatilor.

14.6. Answer the following questions:

1. What does the employment relationship refer to?
2. Which is the difference between an employee and an independent contractor?
3. Name a few duties of employees.
4. Name a few duties of employers.
5. Who has the right to notice?
6. Under what conditions can a person claim a redundancy payment?
7. Explain dismissal "by reason of redundancy".
8. What categories of workers are excluded from making a claim?
9. What is a prospective employer?
10. Can a prospective employer ask questions which do not relate to the applicant's qualifications for the job?

Supplementary Reading

a) A certificate of employment (Adeverință de muncă)

I, the undersigned, David Clement AKIN, Personnel Manager of JOHNSON COPPER MINES, Lutoso, certify that Jean Henri DUMONT was employed by this company as Quality Controller from April 1992 to September 1993.
Signed.
D.C.Akin

Note that *Staff Manager* is a synonym of *Personnel Manager* and *testify* can be used instead of *certify.*

b) INDIVIDUAL EMPLOYMENT AGREEMENT

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PERMANENT FULL TIME OR PART TIME EMPLOYEE

PARTIES

.....

(referred to as "the employer")

and

.....

(referred to as "the employee")

GENERAL

1. This agreement commences ...(date)..... and remains in force unless replaced or terminated in accordance with the termination clause.

2. This individual employment agreement also incorporates the provisions of the employer's Staff Handbook, which is subject to amendment from time to time. In any instance where the Staff Handbook specifies a different condition of employment to that expressly stated in this employment agreement, the provisions of this agreement will override the Staff Handbook. It is agreed that no other promises or undertakings have been relied on in making this agreement.

LOCATION

3. The work of the employee will be based primarily at the .....(location)..... office of the employer located at .....(address).....

DUTIES

4. The position reports to the .....(i.e. floor manager).....

5. The duties of the employee are those attached to this employment agreement. Other duties reasonably within the capability of the employee may also be required from time to time. The employee's duties may be altered following consultation with the employee.

6. The employee is expected to perform the duties diligently and to use best endeavours to promote the interests of the employer in doing so.

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HOURS OF WORK

7. Normal hours are between ….(time i.e. 8.30am-5.00pm)……(days i.e. Monday to Friday)…. Normal requirements of the job mean that the employee must work hours in excess of these if required. The employee is expected to be flexible with time arrangements.

PERFORMANCE

8. Throughout the term of the agreement, the employee's performance will be monitored and feedback provided.

9. The employee is expected to consistently satisfy key performance measures. These are set out in the attached schedule.

10. Salary/Hourly rate is $…….. (amount then when employee is paid i.e. $30,000 per annum paid fortnightly in arrears)……

11. All monies owed to the employee will be …(how employee is paid i.e. credited directly to the employee's bank)……...

LEAVE

12. Annual leave not taken will be paid as the sum of 6% on gross earnings at the end of the agreement.

13. Statutory holidays will be paid for according to the Holidays Act 2003. If the needs of the employer mean that the employee is required to work on a statutory holiday, a day off in lieu will be granted.

CONFIDENTIALITY

14. The employee will have access to privileged and confidential information in the course of employment. This may be about the employer or the employer's members, contract providers, web site users or prospective members.

15. The employee must ensure that all information relating to its members, contract providers, web site users, prospective members or

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the management and board of the employer stays confidential and is not divulged to a third party without the employer's consent.

16. The employee is not authorised to speak to the media concerning the employer's business unless specifically authorised.

17. The provisions as to confidentiality will also apply after the termination of this agreement and the employee agrees to be bound to this.

18. The conditions of confidentiality in this clause should be read in conjunction with the Staff Handbook confidentiality conditions and are additional to those conditions.

CONFLICT OF INTEREST

19. The employee agrees not to do work of any kind in direct or indirect competition to the employer during the term of this agreement. Likewise, secondary employment will not be sought.

TERMINATION

20. The employer may suspend the employee whilst an allegation of serious misconduct is being investigated. The employer may terminate employment without notice or payment in lieu for serious misconduct.

21. Either party may provide notice of a minimum of three weeks to terminate this agreement.

22. If the employee is suffering mental or physical incapacity so as to be unable to reasonably cope with the employee's duties, the employer may terminate employment with proper notice.

23. If any of the representations made by the employee either in the interview process or contained in the employee's CV prove to be untrue, the employer may dismiss the employee with two weeks' notice, which may be paid in lieu.

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24. Upon termination, the employee shall surrender all of the employer's property in the employee's possession, for example, identity card, keys, documents or other material.

25. The conditions of termination in this clause should be read in conjunction with the Staff Handbook termination conditions and are additional to those conditions.

REDUNDANCY

26. Redundancy occurs when employment is terminated by ….(company name)…, the termination being attributable, wholly or mainly, to the fact that the position filled by you is, or will become, superfluous to the needs of ...(company name)…

27. If you are likely to be affected by redundancy ...(company name)… will consult with you regarding alternatives to redundancy. Alternatives may include redeployment or retraining. If there are no viable alternatives, ...(company name)… may give notice of the termination of employment without the payment of compensation for the loss of the job.

EMPLOYMENT RELATIONSHIP PROBLEM RESOLUTION

28. The parties will attempt to resolve any personal grievance or employment relationship problem as close to the point of origin as possible.

29. The procedures contained in the Staff Handbook will be used to settle any employment relationship problem or personal grievance.

VARIATIONS

30. The terms and conditions of this employment agreement may be reviewed from time to time. Any variation agreed to must be recorded in writing otherwise it will have no effect.

EMPLOYEE'S ACCEPTANCE

31. The employee has read and agreed with the terms and conditions of this employment agreement and the Staff Handbook.

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32. The employee acknowledges that he or she has received a copy of this agreement and the Staff Handbook prior to signing this agreement and has had reasonable time and opportunity to obtain advice before signing it.

Dated: 2014

.....
Signed by the employee

.....

For and on behalf of the employer .....

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ANNEXES

ANNEX 1

Organizing Conferences. Meetings

Opening the meeting
Good morning/afternoon, everyone. = Bună dimineața/ ziua tuturor.
If we are all here, let's start (the meeting)/ let's get started = Dacă ne-am adunat, (putem) să începem.

Welcoming and introducing participants
Let us welcome (name of participant) = Să îi urăm "Bun venit!" lui …
Please join me in welcoming … = Să îi urăm împreună "Bun venit!" lui …
We're pleased to welcome/ It's a pleasure to welcome = Avem plăcerea să îi urăm "Bun venit!" lui …
I'd like to introduce = Aș dori să vi-l prezint pe…

Presenting the objectives of a meeting
We're here today to … = Ne-am întâlnit astăzi pentru a …
Our aim/ objective/ goal is to ... = Scopul nostru este de a …
I've called this meeting in order to ... = Am convocat această ședință pentru a …

Apologies for someone who is absent
I have received apologies for the absence of …, who had to … = Vă transmit scuzele lui …, care a trebuit să …

Reading the minutes (notes) of the last meeting
First let's go over the report from the last meeting, which was held on (date) = Mai întâi să revedem procesul-verbal al ultimei ședințe, care s-a ținut pe data de …

Here are the minutes from our last meeting, which was on = Acesta este procesul-verbal al ultimei ședințe, care s-a ținut pe data de …

Dealing with recent developments

John, could you please tell us how the Career project is progressing? = John, ai putea, te rog, să ne spui care este evoluția proiectului Career?

John, have you completed the report on …? = John, Ai terminat raportul privind …?

Has everyone received a copy of the report on … ? = A primit toată lumea o copie a raportului privind …?

Dealing with items on the agenda

I suggest we go round the table first.

So, if there is nothing else we need to discuss, let's move on to today's agenda.

Shall we take the points in this order?

Is there any other business?

I suggest we take item 3 last.

If there are no further developments, I'd like to move on to today's topic.

There are four items on the agenda. First,

If you don't mind, I'd like to ... go in order

Skip item 2 and move on to item 3

(name of participant) has agreed to take the minutes.

We may need to vote on item1, if we can't get a unanimous decision/ if a unanimous decision cannot be reached.

(name of participant) will lead point 1, (name of participant) point 2, and (name of participant) point 3.

Mary, would you mind taking notes today?

We will hear a short report on each point first, followed by a discussion round the table.

Have you all received a copy of the agenda?

The meeting is due to finish at...

Shall we get down to business?

We'll have to keep each item to fifteen minutes, or we'll never get through.

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Introducing the first item on the agenda
So, the first item on the agenda is
So, let's start with
Shall we start with. .
Who would like to introduce this item?

Closing an item
I think that covers the first item.
Shall we finish with that item?
If nobody has anything else to add, ...

Next item
Let's move onto the next item
The next item on the agenda is
I'd like to hand over to Martin, who is going to lead the next point.

Summarizing
Before we close, let me just summarize the main points.
To sum up, ...
In brief, ...
In conclusion, ...

Finishing up
I think we've covered the main items
Is there any other business to discuss/ tackle?

Suggesting and agreeing on time, date and place for the next meeting
Can we fix the next meeting, please?
So, the next meeting will be on...
What about the following/ next Monday?

Thanking participants for attending
I'd like to thank you all for coming over from London.
Thank you all for attending/ for your participation

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Closing the meeting
The meeting is closed.
I declare the meeting closed.

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ANNEX 2

Letter Writing

Starting a letter

Dear Sandra, (writing to a friend)
What a long time …
It's (been) a long time

Dearest Mary,

Dear Mr. … (a neutral tone)
Dear Mrs. …
Dear Miss …

Dear Sir/ Madam, (formal)

Ending a letter

I hope you will enjoy your stay here.
Yours faithfully,

I am looking forward to hearing from you.
Yours sincerely,

Send my regards to Professor Smith.
With best wishes,
All the best,
With kind regards,
Best regards,
With all good wishes,
All good wishes,

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Yours, (formal)
Yours sincerely,
Sincerely yours,

Yours affectionately, (informal)
Affectionately yours,
Love,
All my love,

General expressions

1. Your letter of... = Scrisoarea dumneavoastră
   a) has duly arrived this morning = A sosit în această dimineață
   b) arrived yesterday = a sosit ieri
2. I/ we have just received... = Tocmai am primit
3. We have received in due course = Am primit la timp
4. We are very pleased to receive = Ne face plăcere să primim
5. We acknowledge the receipt of... = Confirmăm primirea
6. With best thanks we acknowledge (the) receipt of ... = Confirmăm cu mulțumiri primirea
7. We are pleased to hear/ learn that ... = Ne face plăcere să aflăm că ...
8. We are very much obliged (to you for ... = Vă suntem foarte recunoscători pentru ...

Confirming

1. We confirm our letter of November 15, 2014. = Confirmăm scrisoarea noastră din 15 noiembrie, 20114.
2. Confirming our letter of... = În confirmarea scrisorii noastre...
3. In confirmation of our last letter ... = În confirmarea ultimei noastre scrisori ...
4. I hope/ trust you have received ... = Sper că ați primit
5. I presume you are in receipt of ... = Presupun că ați primit ...

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6. We refer to = Facem referire la
   a) our telephone conversation = conversația noastră telefonică
   b) our email = emailul trimis
   c) our letter of … = scrisoarea noastră din…

Replying

1. In answer to … = Ca răspuns la…
2. In reply to/ Replying to = Ca răspuns la…
3. With reference to/ Refering to … = Cu referire la…
4. With regard/ respect to … = În legătură cu…
5. Regarding/ Concerning/ With regard to… = Referitor la…
6. Following up … Ca urmare a …
7. In compliance with/ In accordance with/ In conformity with… = În conformitate cu…
8. Complying with your demand … = Răspunzând cererii dumneavoastră…
9. According to your order/ instructions/ directions… = Potrivit comenzii/ instrucțiunilor/ dispozițiilor…
10. In consequence of/ owing to… = Ca rezultat al/ Datorită…
11. Due to… = Din cauza…
12. Upon the recommendation of… = La recomandarea…
13. At the request of… = La cererea…
14. At the suggestion of… = La sugestia…
15. Allow/ Permit us/me to… = Permiteți-ne/ Permiteți-mi să…
16. The purpose/ object of this letter is… = Scopul/ Obiectul acestei scrisori este …
17. I take this opportunity = Folosesc acest prilej
    a) to inform you of = Să vă informez despre
    b) to communicate to you…. = să vă comunic…
    c) to give you notice/ warning = să vă înștiințez/ avertizez
    d) to notify you of = să vă înștiințez
    e) to tell you/ to remind you = să vă spun/ să vă reamintesc
    f) to draw/ direct/ call your attention to… = să vă atrag atenția asupra…
18. I have been informed = Am fost informat
19. I am inclined to believe that = În clin să cred că

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20. We shall endeavour to...= Ne vom strădui să...
21. We are ready/ willing to = Suntem pregătiți/ Dorim să
22. We agree with you on... = Suntem de acord cu dumneavoastră asupra...
23. We agree to your suggestion = Suntem de accord cu sugestia dumneavoastră
24. We accept your terms/ conditions = Acceptăm condițiile dumneavoastră
25. I do not doubt for a moment/ in the least that ... = Nu pun la îndoială nicio clipă/ câtuși de puțin
26. I shall leave it to you = Las la alegerea dumneavoastră
27. Your proposal meets our approval = Propunerea dumneavostră este acceptată
28. You may be sure that... = Puteți fi sigur că...
29. You must admit that... = Trebuie să recunoașteți că...
30. You must consider/ take into consideration that... = Trebuie să luați în considerare...
31. You cannot deny that... = Nu puteți nega că...
32. You cannot ignore that... = Nu puteți ignora faptul că...
33. You overlook the fact that... = Omiteți faptul că...
34. It is (quite) obvious that... = Este evident că...
35. We much regret = Regretăm
    a) being obliged to inform you that... = că avem obligația să vă informăm că...
    b) to decline/ refuse your offer... = că trebuie să vă refuzăm oferta
    c) not being able to accept your conditions/ to meet your requirements = că nu putem accepta condițiile dumneavoastră/ nu putem îndeplini condițiile dumneavoastră
36. You will/ Please find enclosed... = Vă supunem atenției anexa/ În anexă găsiți/ Atașat găsiți

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The closing paragraph

1. We hope/ trust = sperăm
   a) to hear from you soon = să avem veşti de la dumneavoastră curând
   b) to receive a favourable answer = să primim un răspuns favorabil
   c) you will give this matter your immediate attention attention = că veţi acorda imediat atenţie acestei problem
2. May we expect/ hope = Putem aştepta/ spera
   a) to hear from you next week? = să avem veşti de la dumneavoastră săptămâna viitoare?
   b) to have your decision soon/ by tomorrow? = să cunoaştem hotărârea dumneavoastră curând/ mâine?
3. We look forward to hearing from you soon = Aşteptăm cu nerăbdare să primim veşti de la dumneavoastră curînd
4. May/ can we count on… = Putem conta…?
   a) hearing from you soon? = Să primim veşti de la dumneavoastră curând?
   b) having an early answer from you on the matter? = că primim un răspuns în această problem curând?
5. Kindly let us have an answer = Vă rugăm respectuos să ne răspundeţi
6. Kindly settle the matter = Vă rugăm să rezolvaţi problema
   a) as soon as possible = cât de curând
   b) at your earliest convenience = cât puteţi de repede
   c) within the next few days = în următoarele zile
7. Looking forward to your reply = Aşteptăm cu nerăbdare răspunsul dumneavoastră
8. Your early answer/ reply/ kind attention will much oblige = V-am fi recunoscători pentru un răspuns urgent
9. We thank you = Vă mulţumim
   a) for your confidence = pentru încredere
   b) for your goodwill/ support = pentru bunăvoinţă/ sprijin
10. We thank you in advance/ beforehand for… = Vă mulţumim anticipat pentru…
11. We should be thankful to you for… = Vă suntem recunoscători pentru…

Examples of Letters

A Cover/Covering Letter

Your Cover Letter (CL) demonstrates your writing style. It provides information showing that you have the qualities the job calls for, and makes a statement about yourself and your suitability for the job. It should be:

1. elevated and formal
2. be one side only, 5 paragraphs or fewer
3. be positive
4. Don't start too many paragraphs with "I".
5. Give proof that you have experience, relevant skills, knowledge about the company.
6. Use action words (e.g. communicate)

Salutation	*Ending*
UK Sir/ Madam	Yours respectfully
Dear Sir/ Madam	Yours faithfully
Dear Mr. Brown/ Mrs. Brown	Yours sincerely
US Dear Sir	Sincerely yours
Dear Mr. Jones	Sincerely yours

When replying to an *advertisement for a position*:

- Write from your home address;
- Specify where you saw the advertisement or heard about the position;
- Write the reasons which make you apply for that job;
- State your qualifications and offer copies of relevant certificates;
- If you are working, give a short presentation of what you are doing now and explain why you intend to change your job.

If no post has been advertised, but you know of a vacancy, you can write an *unsolicited application*:

- Address the person responsible for the position;

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- Specify the mutual contact or acquaintance who told you about the vacancy;
- Include whatever might be relevant for your application (qualifications, certificates etc.)

Useful key phrases

- With reference to your advertisement in ... of ... I would like to apply for the position of ... in your company.
- I served my apprenticeship at... and am thoroughly familiar with all aspects of office work/ export procedure.
- I am writing to you in response to your advertisement for...
- I studied...
- My reason for looking for a change is the better opportunities offered by a large company like yours.
- During training for my present job I attended classes in ...
- I have a degree in ... from the University of ...
- Please refer to the enclosed curriculum vitae/ personal data sheet for further particulars.
- As you can see from my enclosed resume, my experience and qualifications match this position's requirements.
- Please accept this letter as an expression of interest in the position of...
- I have enclosed a copy of my resume for your review.
- ...and believe I possess the right combination of....skills.
- My current position .... has provided the opportunity to ...
- I would welcome the opportunity to personally discuss my potential contributions to your company with you.
- For information about my work record, please contact...
- I see from your advertisement in ... that you are looking for a ...
- My present employer is closing down his business.
- I am confident my qualifications will be of interest to you, and I look forward to hearing from you.
- I am anxious to examine my potential contributions in depth.
- I would like to point out... immediately upon his return.
- I have had... years' experience in ...

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- My proficiency in French means that I would be able to handle all the French correspondence on my own.
- I recently heard from ... that there is a vacancy in your ... department.
- During ...., I improved (furthered, extended, etc.) my knowledge of...,
- I enrolled for a year's course at ...
- ... of ... has told me that some time in September there will be a vacancy/ an opening for ... in your department.
- I look forward to an opportunity to speak with you in person. (OR to speak with you personally)
- My reason for applying for the post is that I would like to have more responsibility.
- I look forward to meeting you.
- It would be a pleasure to supply any further information you may find helpful.

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Example of a Cover Letter

2520 Vista Avenue
Olympia, Washington 98501
May 20, 2008

Mr. Bob Smith, Personnel Manager
Importers Inc.
587 Lilly Road

Dear Mr. Smith:

I am writing to you in response to your advertisement for a Legal Assistant specializing in Commercial Law, which appeared in the Seattle Times on Sunday, June 20.

I have been working for three years in well-established firm where I deepened my knowledge of the commercial regulatory laws in our state. Despite the great satisfaction I obtain from my work, I now feel that it is time to move on and accept a post of greater responsibility in a similar field.

As you can see from my enclosed resume, my experience and qualifications match this position's requirements.

Should my application interest you , I would be happy to meet you at your convenience.

Sincerely yours,
John Blake

Enclosure

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Business Letter Format

Return Address Line 1 **1**
Return Address Line 2

Date (Month Day, Year) **2**

Mr./Mrs./Ms./Dr. Full name of recipient. **3**
Title/Position of Recipient.
Company Name
Address Line 1
Address Line 2

Dear Ms./Mrs./Mr. Last Name, **4**

Subject: Title of Subject **5**

Body Paragraph 1 . . . . . .
. . . . . .
. . . . . .

Body Paragraph 2 . . . . . .
. . . . . .
. . . . . .

Body Paragraph 3 . . . . . .
. . . . . .
. . . . . .
6

Closing (Sincerely...), **7**

Signature **8**

Your Name (Printed) **9**
Your Title

KNUST CENTRAL UNIVERSITY LIBRARY

Enclosures (2) **10**
Typist Initials. **11**

Your Address 1
Your address, but not your name. The return address of the sender so that the recipient can easily find out where to send a reply to. (Not needed if the letter is printed on paper with the company letterhead already on it.)

Date 2
Put the date on which the letter was written in the format Month Day Year i.e. June 20, 2009.

Inside Address 3
The name of the person you are writing to, his title or position within the company, as well as and the address. In case you are not sure who the letter should be addressed to either leave it blank, but try to put in a title, i.e. "Director of Human Resources", "the Manager".

Salutation 4
Dear Sir/ Madam, Dear Sir or Madam (if you don't know the name of the person you are writing to). Dear Ms./Mrs./Mr. Last Name:, Dear Director of Department Name: or To Whom It May Concern: if recipient's name is unknown.

Subject Line (optional) **5**
For instance, "Acknowledgement of letter and printed material".

Body 6
The body is the content of the letter.

Closing 7
In American English: Sincerely, Sincerely yours, Thank you, and so on.

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In British English: Yours sincerely (if you started with a name: Dear Mr. Smith), Yours faithfully (if you started with Dear Sir or Madam).

Signature 8
Your signature will go in this section, usually signed in black or blue ink with a pen.

Printed Name 9
The printed version of your name, and if desired you can put your title or position on the line underneath it (which is used when writing from a business).

Enclosure 10
If letter contains other document other than the letter itself your letter will include the word "Enclosure(s)".

Reference Initials 11
If someone other than yourself typed the letter you will include your initials in capital letters followed by the typist's initials in lower case in the following format; AG/gs or AG:gs.

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Example of a Business Letter

3519 Front Street
Mount Celebres, CA 65286

September 19, 2014

Ms. Mary Johnson
The Manager
William Hardy &Co Ltd
153, Nile Street
Newport
England

Dear Ms. Johnson,

Your name and address have been given to us by the Brewster Co with which we have done considerable business for some time.

We would be glad to receive specifications of your new products, together with your current export prices and details of trade discount.

We are looking forward to hearing from you.

Yours sincerely,

Signature

Bob Powers
Manager

Useful key phrases

- We act on behalf of ...
- As a follow-up to our meeting on July 23 at my office,...

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- We are grateful for your most recent price-lists and we would like to …
- We saw your products at …
- We have seen your advertisement in …
- There is no market here for articles of this type
- Will you please send us your catalogue and price list for …
- We are also interested in your terms of payment and in discounts offered for regular purchases and large orders
- To avoid further unnecessary legal costs therefore we look forward to receiving your proposals
- You requested information from me regarding …
- You have requested advice regarding …
- According to the information my firm has received …
- Please do not hesitate to contact me if you have any questions

Complaint Letter

Useful key phrases

- I have recently ordered … from your website on …
- Unfortunately, when I opened it, I saw that …
- To resolve the problem, I would like to …
- Thank you for taking the time to read this letter
- This is the first time I have encountered a problem
- We would like to inform you that the quality is decidedly inferior to any other previously supplied
- We are making a claim on/ against you for …
- We cannot possibly supply our customers with the articles we have received from you as …
- As our written agreement stipulated, we expected ...
- I think you will agree that a communication problem exists.
- We have received serious complaints from our clients with regard to …

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- We are writing to complain of some serious defects in …
- we were very disappointed to find / see / have discovered ...
- The goods we have received do not tally with the sample
- You have supplied goods below the agreed standards
- The best solution would be for us to return the wrong articles to you, postage and packing forward
- We would like you to ..., or provide us with a refund
- Although the quality of these goods is not up to that of our usual lines, we are prepared to accept them if you will reduce the price, say by …
- As the quality of the goods received is inadequate, we shall have no option but to send them back and to debit you with the transport expenses

Letters of Acknowledgement

Useful key phrases

- I hereby acknowledge the receipt of the following documents…
- It will be brought to his attention immediately upon his return.
- If I may be of any assistance, please do not hesitate to call.
- I hereby acknowledge the receipt of the following documents from the firm of …:
- I am acknowledging receipt of your letter dated …
- We acknowledge with thanks receipt of your order of …
- Thank you for your order no. …, dated …
- The order will be executed according to your instructions

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ANNEX 3

WRITING A CURRICULUM VITAE

europass

Europass Curriculum Vitae

Insert photograph. Remove heading if not relevant (see instructions)

Personal information

First name(s) / Surname(s)	**First name(s) Surname(s)** (remove if not relevant, see instructions)
Address(es)	House number, street name, postcode, city, country (remove if not relevant, see instructions)
Telephone(s)	(remove if not relevant, see instructions) Mobile: (remove if not relevant, see instructions)
Fax(es)	(remove if not relevant, see instructions)
E-mail	(remove if not relevant, see instructions)
Nationality	(remove if not relevant, see instructions)
Date of birth	(remove if not relevant, see instructions)
Gender	(remove if not relevant, see instructions)

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Desired employment / Occupational field	**(remove if not relevant, see instructions)**
Work experience	
Dates	Add separate entries for each relevant post occupied, starting from the most recent. (remove if not relevant, see instructions)
Occupation or position held	
Main activities and responsibilities	
Name and address of employer	
Type of business or sector	
Education and training	
Dates	Add separate entries for each relevant course you have completed, starting from the most recent. (remove if not relevant, see instructions)
Title of qualification awarded	
Principal subjects/occupational skills covered	
Name and type of organisation providing education and training	

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Level in national or international classification	(remove if not relevant, see instructions)
Personal skills and competences	
Mother tongue(s)	**Specify mother tongue** (if relevant add other mother tongue(s), see instructions)
Other language(s)	

Self-assessment	Understanding				Speaking				Writing	
European level (*)	Listening		Reading		Spoken interaction		Spoken production			
Language										
Language										

(*) Common European Framework of Reference for Languages

Social skills and competences	Replace this text by a description of these competences and indicate where they were acquired. (Remove if not relevant, see instructions)
Organisational skills and competences	Replace this text by a description of these competences and indicate where they were acquired. (Remove if not relevant, see instructions)
Technical skills and competences	Replace this text by a description of these competences and indicate where they were acquired. (Remove if not relevant, see instructions)
Computer skills and competences	Replace this text by a description of these competences and indicate where they were acquired. (Remove if not relevant, see instructions)
Artistic skills and competences	Replace this text by a description of these competences and indicate where they were acquired. (Remove if not relevant, see instructions)

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Other skills and competences	Replace this text by a description of these competences and indicate where they were acquired. (Remove if not relevant, see instructions)
Driving licence	State here whether you hold a driving licence and if so for which categories of vehicle. (Remove if not relevant, see instructions)
Additional information	Include here any other information that may be relevant, for example contact persons, references, etc. (Remove heading if not relevant, see instructions)
Annexes	List any items attached. (Remove heading if not relevant, see instructions)

Do's and Don't's of writing a CV

1. Do not write in a conversational tone.
2. Do not use contractions.
3. Spell out words (e.g. do not use & instead of 'and').
4. Use conventional spellings (e.g. 'through', not 'thru').
5. Avoid the use of such qualifiers as: really, pretty, very, rather, quite etc. You beg the reader to believe you.
6. Avoid certain words which are devoid of meaning (e.g. 'nice').
7. Put statements in the positive. Tell the reader what is, not what is not.

Useful words and phrases when writing a CV

higher education = studii superioare
degree in law = licenţă în drept
BA in Law/LLB = licenţă în drept
MA in law/LLM/ master of laws/masters in law/master's degree in law = masterat în drept
PhD in law = doctorat în drept, doctor în drept
Doctor of Laws/LLD = doctor în drept (titlu superior celui de PhD)

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to graduate from = a absolvi
to complete/earn a degree in = a obține o diplomă în
undergraduate studies = studii universitare
post-graduate studies = studii postuniversitare
graduate = absolvent
MA student = masterand
PhD student = doctorand
Doctoral/doctorate degree = doctorat
full time courses = studii la zi
part time courses = studii la frecvență redusă
background/ training = pregătire, calificări, formare, experiență
professional experience/ work experience/ employment history/ work history/ previous employment = experiență profesională
awards and honours = premii și distincții
skills/ competences/ strong points/ strengths/ assets = competențe, abilități
direction/ positions of responsibility = posturi de conducere
the context the skills and competences were acquired through training, work, seminars, voluntary or leisure activities)
or leisure activities, etc.)
to date = până în prezent
skills gained on this course:

- verbal and written communication
- analyzing and problem solving
- using and processing information from various sources, providing information
- time management
- conducting/carrying out research
- presentation
- negotiation
- attention to detail
- logical reasoning

strong/solid/excellent/wide/extensive/broad/varied/ successful/relevant/top-level experience gained in/

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through
highly experienced in (office management/project management)
background in (auditing)
outstanding/proven/excellent/substantial record of (bringing projects on schedule)
strong ability to/ in
organizational/communication/interpersonal skills
in depth knowledge of
training in
team spirit
ability to adapt to multicultural environments, gained though my work experience abroad
good communication skills gained through my experience as sales manager
sense of organisation (experience in logistics)
good command of quality control processes
excellent coordination and administration of people, projects and budgets

Personal qualities
detail-oriented person
highly-organized individual
strongly motivated
output focused
committed to
strong commitment
sensitivity to
genuine concern for
sense of responsibility
well-developed leadership
understanding of and empathy with other cultures
time management skills
attention to details
precise analytical ability
able to work independently/ in team
skilled in
good at

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familiar with
specialist in
effective in
certified to
credentialed to

Action verbs

to achieve, address, administer, analyze, arrange, assess, assist, budget, build, calculate, carry out, cooperate, conduct, coordinate, collaborate, compose, complete, conduct, control, co-ordinate, create, demonstrate, design, develop, diagnose, discover, distribute, expand, explain, evaluate, elaborate, establish, evaluate, examine, formulate, guide, generate, improve, implement, increase, initiate, instruct, launch, lead, liaise, manage, monitor, negotiate, observe, organize, oversee, persuade, present, promote, plan, participate in, promote, recommend, represent, research, select, set up, solve, study, supervise, staff,teach, train, test, transform, unify, etc.

Top ten employability skills

1. Verbal communication: ability to express ideas clearly and support opinions confidently
2. Teamwork: integrate in, work within a group
3. Commercial awareness: understand the commercial realities affecting the organization
4. Analyzing and investigating: gathering and making systematic use of information; problem solving
5. Initiative/self motivation: ability to act on initiative, identify opportunities, put forward ideas and solutions
6. Drive: determination and ability to achieve goals
7. Written communication: ability to express clearly in writing
8. Planning and organizing: ability to plan activities and carry them through effectively
9. Flexibility: adaptability to changing situations and environments

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10. Time management: proritising tasks, ability to work to deadlines

EU careers

The selection procedure for careers with EU institutions is very dynamic.
The key competencies they are looking for from graduate applicants are:

- Analysis and problem solving
- Communicating
- Delivering quality and results
- Learning and development
- Prioritising and organising
- Resilience
- Working with others
- Leadership

Why EU careers?

Advantages of a EU career:

- A lifetime of different jobs
- Interesting and challenging work that makes a real difference for Europe
- An environment where you are encouraged to learn new skills and languages
- The opportunity to work and travel abroad, and work with people from all over Europe
- An attractive benefits package

Other eligibility requirements:

- You have a motivation to work for Europe and you want to make a difference to the lives of its 500 million citizens.

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- You have strong analytical, organisational and communication skills and can adapt easily to a variety of environments and stakeholders.
- You have the drive to deliver results and the ability to work effectively as part of a multi-cultural team.
- You are eager to learn and develop your knowledge and skills.
- You would like to use and enhance your language abilities.

Competency framework

EU staff selection does no longer rely on pure knowledge, it is competency driven. In addition to competency in the field of the competition, the following seven general competencies were identified as being the most relevant for all people working within the EU Institutions.

- Analysis and Problem Solving – Identifies the critical facts in complex issues and develops creative and practical solutions
- Communicating – Communicates clearly and precisely both orally and in writing
- Delivering Quality and Results – Takes personal responsibility and initiative for delivering work to a high standard of quality within set procedures
- Learning and Development – Develops and improves personal skills and knowledge of the organisation and its environment
- Prioritising and Organising – Prioritises the most important tasks, works flexibly and organises own workload efficiently
- Resilience – Remains effective under a heavy workload, handles organisational frustrations positively and adapts to a changing work environment
- Working with Others – Works co-operatively with others in teams and across organisational boundaries and respects differences between people

A further competency applies to Administrator grades: Leadership – Manages, develops and motivates people to achieve results.

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